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FROM

Hon. G. F. Hoar.

30 Jan. 1891.

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"If crime rule our Elections the Republic can not live."

UNITED STATES ELECTIONS.

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SPEECH

OF

HON. GEORGE F. HOAR,

OF MASSACHUSETTS,

IN THE

SENATE OF THE UNITED STATES,

Monday, December 29, and Tuesday, December 30, 1890.

WASHINGTON:
1891.

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JAN 30 1891
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The Author

SPEECH

OF

HON. GEORGE F. HOAR.

Monday, December 29, 1890.

The Senate having under consideration the bill (H. R. 11045) to amend and supplement the election laws of the United States, and to provide for the more efficient enforcement of such laws, and for other purposes—

Mr. HOAR said:

Mr. PRESIDENT: The progress of liberty is like the advance of a tide. When its crested wave is highest it breaks and recedes. Its strength seems all gone. Its waters scatter and fall away. It seems, for the moment, as if its only office had been to float and to leave on the sand a little froth and a little scum, or deposit in the rank mud the carcasses of drowned animals or decaying fishes. But the eternal, ever-changing, never-changing ocean keeps what it gains. It renews its strength, it repeats its blow, it advances its step. The beach, the bank, the solid rock crumble before it. Its eternal purity is the health and life of the continent it embraces, and from its level all heights and depths are measured.

The great day of the Puritans who planted America, the day when English power and English liberty were born, was followed by that of Charles II, the dissolute pensioner of France, and of James, the cowardly bigot, who slunk away from his kingdom without a blow. But the great gain which England made under Cromwell had not been lost. There came in with William a purer, a wiser, and a more temperate liberty. That gave place in its time to the profligacy and corruption of the time of the early sovereigns of the House of Hanover. Then again the free spirit of England raised its head, uttering its voice in the speech of Chatham and manifesting its power in the victory of Wolfe.

Chatham in his turn gave way to Lord North and George Townsend, and the statesmen of the stamp act, and the purchased House of Commons, and the purchased Irish Parliament, and the prostitution of the jury, and the loss of America. But liberty was not dead, nor sleeping. She was but gathering her forces for the coming triumphs of the reform bill, and the rights of juries, and Catholic emancipation.

It has been the same in our own history. After the period of the Declaration of Independence, and the Revolution, and Yorktown, came that pitiful season of broken faith and unpaid debts, and divided counsels, and Shays's rebellions, and national weakness and dishonor, when our friends in Europe thought the best we could do was to throw ourselves on our knees before George III and beg him to take us back again under his protection. But out of this period came the greatest forward step ever made by mankind, the framing and adoption of the Constitution of the United States and its inauguration under Washington and John Adams.

Through what seeming alternations of fortune, yet through what constant, steady, and steadfast advance did this nation pass to its victory in the great struggle between freedom and slavery for the possession of the great territory between the Mississippi and the Pacific. The uprising of 1848, whose flame spread through Europe, was followed by the degradation of 1850, out of which came the compromise measures, including the infamous fugitive-slave law. You would have thought, in those dismal years of Northern submission and Southern arrogance, that, as our great orator said, "renown and grace were dead." He wrote in 1855 to his friend at Carácas:

> Your estate is gracious that keeps you out of our politics. Anything more low, obscene, feculent, the manifold oceanic heavings of history have not cast up. We shall come to the worship of onions, cats, and things vermicular.

And this was within six years of the heroic days of 1861. This was within six years of that great period of military prowess unsurpassed, of legislative achievement unequaled, of rebellion put down, of Union restored, of slavery abolished, of citizenship conferred, of the independence of American manufacture achieved, of the faith kept, of the debt paid, of the homestead law, of the banking law, of the sound currency, of reparation and apology exacted from England, of the doctrine of perpetual allegiance abandoned abroad, of the flag honored everywhere in peaceful seas and welcomed everywhere in friendly ports—the time of Lincoln and Grant and Seward and Sumner, the prophets whom all parties and all sections now delight to honor, the prophets whom your fathers and the elders of you stoned, and you build their sepulchers.

I have narrated this history as my answer to those Senators who think that the American people have settled a great question of justice and righteousness by a single show of hands and who taunt us with the result of a single election.

If this bill shall be adopted and prove effectual it will be the last of the great measures which have in them anything of legal restraint which the changes in our Constitution have made necessary. Another measure, which I had fondly hoped would precede, must follow. That is a measure to secure for every child on American soil the education which shall fit him for citizenship and enable him to read and understand the Constitution of his country. When these two things are brought to pass the ideal Republic will have become real.

The struggle for this bill is a struggle for the last step toward establishing a doctrine to which the American people are pledged by their history, their Constitution, their opinions, and their interests. We can not know in our citizenship slaves, vassals, subjects, serfs, or inferior races. Whatever limit you may seek to place upon the universality of the affirmation of the Declaration, in rights under the Government every soul is the born equal of every other. It is idle to debate theories or philosophies in the presence of the express provision of the Constitution.

I wish to reject and to repel, with all the indignation which the calumny deserves, the aspersion that this is a partisan measure or that any man who supports it is actuated by a partisan purpose. We undoubtedly believe it to be true that the men who are now deprived of their constitutional rights are deprived of them because of their political opinions. It is also, of course, true that when men are violently or fraudulently deprived of their votes because of their political opinions, the crime will be committed by men of other political opinions.

But that the operation of this bill will give one party an advantage over another, that it will help one party rather than another, except so far as an honest election will help one party rather than another, I utterly deny.

This is a bill to exclude partisanship from the determination of the title to a place on the roll of the House of Representatives as absolutely as the lot of humanity will admit. For the sake of bringing these elections more completely under their partisan control it has been the Democratic policy in many Southern States to take the choice of the election officers from the precincts and the people of the localities and place it directly or indirectly under the control of the governor, always a party leader and not infrequently interested in the result. This bill before us confers the power of selecting men to witness what happens upon the judges, who are admitted to be the class of officers furthest removed from partisan influence, and in case of dispute substitutes the judge for the party leader in the duty of giving the certificate.

The Senator from Tennessee made this charge of partisanship with great vehemence. Yet, in his own circuit, which includes the great States of Tennessee, Kentucky, Ohio, and Michigan, the function is to be exercised by his own Democratic predecessor, a Confederate and a Democrat, the trusted counselor of President Cleveland, and appointed by him to the bench.

I hope that as I proceed I shall be able to satisfy the Senate that it is in the opposition and not the support of this measure that partisanship is to be found, and that the anger which it has excited is the anger of men who fear that their control of elections and manipulation of returns for partisan purposes is to come to an end before the just and impartial authority of the judiciary of their country.

This is, in many respects, the most astonishing debate that ever occurred in the American Congress. We have before us a very simple bill to accomplish a very simple purpose. It was found after a trial of eighty years that the existing safeguards furnished by the States were not enough to secure the purity of elections in the great cities of the North against the temptation of that master passion of the human soul, the desire for political power. A state of things had come to pass of which the framers of the Constitution had never dreamed. Great masses of men, more in number than the aggregate population of many States a hundred years ago, were gathered in single cities, where also were great masses of wealth, a half dozen men, and, in some cases, one man being richer than the whole country together when the Constitution was framed.

The larger portion of the population of these cities were of foreign birth. They had thronged into the ever-open gates of our beautiful temple, inspired by the love of liberty, but with the great and austere lesson of self-government yet to be learned. It is not to be wondered at that these men became the victims of the unhallowed ambition and greed of the Democratic politicians, of whom Tweed was neither the first nor the last nor the worst example. It is no wonder that the local regulations which they made for themselves were not sufficient to protect them against themselves. I need not repeat in detail the familiar and ignoble story. The Democratic politician met the immigrant at the shore to put a whisky-bottle in one hand and a fraudulent ballot in the other.

The result is well known. Fraudulent voting was reduced to the certainty, if not the beauty, of an exact science. False naturalization

papers, all dated within the space of a few days, were issued by the tens of thousands, by the sixty thousand, by Democratic judges. The elections came very soon to bear no relation whatever to the will of the people. Tweed, the great Democratic chieftain and senator, at last boasted that if he could do the counting he did not care who did the voting. The good and honest men of the great city of New York cried for help to the Government of their country.

The result was the act of 1870. That act provided, as this bill provides, mainly and chiefly, for letting in the sunlight upon the transaction. Officers were to be selected by the courts of the United States, who should prevent fraudulent voting and registration for members of Congress, and, above all, should witness and know what took place at the elections. In spite of an outcry as violent and as reckless as that which has attended the debate on this bill, in spite of denunciation and threats of bloody resistance, the law of 1870 went into peaceable operation.

The result has shown that it is one of the most just and beneficial statutes ever enacted. A committee was appointed by a Democratic House of Representatives who were intended and expected to condemn the practical administration of this law. But that committee, through its chairman, Mr. Cox, a distinguished New York Democrat, pronounced earnestly in its favor. Re-enforced by the testimony of Mr. William C. Whitney, the corporation's counsel, of John Kelly, and other eminent New York Democrats, they urged Congress to extend to the rest of the country the provisions of this benignant statute.

We have later Democratic testimony. In 1884 four members of the House, residents of the city of Brooklyn, N. Y., addressed to Mr. Brewster, the Attorney-General, an urgent request for a more liberal allowance of pay and a longer term of employment for the supervisors, who are now denounced as spies and informers and infamous hirelings, employed to intimidate the people and thwart the expression of their will. I send the letter to the desk to be read.

The VICE PRESIDENT. The letter will be read.

The Secretary read as follows:

WASHINGTON, *December* 10, 1884.

DEAR SIR: We, the Representatives in Congress from Brooklyn, N. Y., unite in asking that you modify your instructions to Marshal Tate, under date of November 19, 1884, which were in part as follows: "Each supervisor is to be paid $5 per day for the number of days served, not exceeding five days in number." * * *

We do not believe that in any other city the Government gets as much service from the supervisors or that in any other city the compensation is more honestly earned. We know that in none are the election laws enforced with greater thoroughness or efficiency. * * *

We remain, very respectfully, yours truly,

DARWIN R. JAMES.*
FELIX CAMPBELL.†
W. E. ROBINSON.†
HENRY W. SLOCUM.†
Congressman at Large.

Hon. BENJAMIN B. BREWSTER,
Attorney-General, Washington, D. C.

Mr. HOAR. Of these four Representatives three were distinguished Democrats, residents of the great city of Brooklyn. One of them is General Slocum, Representative at Large from the whole State of New York, representing five million people, and a very prominent candidate for his party's nomination for the Presidency. What a perfect and triumphant answer is this single letter to the railing—to what I

* Republican. † Democrat.

am bound in charity to call the ignorant railing—of the Senators from Virginia and West Virginia.

Here is a petition for the application of this law from the great Democratic city of Chicago. In 1884 the Republicans petitioned the court for national supervision; but in 1888 the petition was filed by the managers of the Democratic campaign. I send the petition to the Secretary to be read. I will read in the first place a portion of a letter I have from the chief supervisor of elections there:

OFFICE OF E. B. SHERMAN,
CHIEF SUPERVISOR OF ELECTIONS,
NORTHERN DISTRICT OF ILLINOIS, *Chicago, December* 12, 1890.

DEAR SIR: Pursuant to your request, I inclose you certified copies of the petition for the appointment of supervisors of election in Chicago, in 1888, and the order for the opening of the court for this purpose.

It has been the custom in this district for those actively in charge of the campaign of the respective parties to initiate the proceedings for the appointment of supervisors, if they so desire. In 1884 the representative Republicans, at the instance of the county central committee, made the application. In 1888 the application was made at the instance of the committee in charge of the Democratic campaign. The names of the applicants will appear upon the petition and in the order. Some of them at least will be familiar to Senator FARWELL, and probably more to Mr. Shepard, his private secretary. As I understand, they are all Democrats, and signed as representatives of the Democratic party. The petition and the order were drawn by Capt. W. P. B lack—

I dare say my friend from Illinois knows who this gentleman is.

Mr. CULLOM. He is a brother of General John C. Black.

Mr. HOAR. I understand he is a brother of General John C. Black—

on behalf of the committee, and he appeared in court, filed the petition, and asked the entry of the order.

Very respectfully, yours,

E. B. SHERMAN.

Hon. GEORGE F. HOAR.
Senate Chamber, Washington, D. C.

This is the letter, and I will ask my honorable friend from Illinois to listen to the names and see if they are the names of eminent Democrats in that State.

The Secretary read as follows:

[W. P. Black, attorney and counselor, 108 Dearborn street, Chicago.]

Hon. WALTER Q. GRESHAM,
United States Circuit Judge, Northern District of Illinois:

Your petitioners undersigned hereby make known in writing to your honor that they are citizens of the United States of good standing, residing and exercising the elective franchise in the city of Chicago, Ill., located in said district, and which is a city of more than 20,000 inhabitants. That the undersigned desire to have the pending registration of voters in said city, which by law is to occur on the 9th and 16th days of October, proximo, and the approaching election, which is to occur in said city on the 6th of November, proximo, guarded and scrutinized pursuant to the provisions of the statutes of the United States in that behalf. They therefore pray your honor to take all requisite action in the premises pursuant to law.

SILAS D. BALDWIN,
LOUIS ADAMS,
West Town, Chicago.
P. F. MURTAUGH,
A. W. BALDWIN,
South Town, Chicago.
CHAS. D. WELLS,
J. H. McHENRY,
North Town, Chicago.
WM. EDGAR.
W. P. MURPHY.
P. M. RILEY.
G. H. SOLOMON.
C. B. LEACH.

(Indorsed:) Filed September 26, 1888. William H. Bradley, clerk.

HOAR

In the United States circuit court of northern district of Illinois.

WEDNESDAY, *September* 26, 1888.

Present, Hon. Walter Q. Gresham, circuit judge.

In the matter of the application of Silas D. Baldwin, Louis Adams, William Edgar, W. P. Murphy, P. F. Murtaugh, A. W. Baldwin, Charles D. Wells, J. H. McHenry, C. B. Leach, P. M. Riley, and G. H. Solomon, for the appointment of election supervisors under the provisions of the Revised Statutes of the United States.

The above-named persons having presented their said petition, and it appearing that the same is in due form, and that the petition is filed in apt time and by citizens of Chicago in good standing, the same being a city of more than 20,000 inhabitants: it is therefore ordered that this court be opened on Thursday morning, September 27, 1888, for the appointment of supervisors of election for the election to be held on Tuesday, November 6, 1888, in the said city of Chicago, and of the registration of voters on October 9 and 16, 1888, for said election; such supervisors to guard and scrutinize such registration and election, and to exercise the powers, have the authority, and perform the duties imposed and conferred by law in such cases; and it is further ordered that such court shall remain open for the transaction of all business growing out of the entry of this order, pursuant to the provisions of section 2013 of the Revised Statutes of the United States.

Northern district of Illinois, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be true and correct copies of the petition filed September 26, 1888, and of the order entered of record in said court on the 26th day of September, A. D. 1888, in the matter of the application of Silas D. Baldwin *et al.*, for the appointment of election supervisors, etc., as the same appears from the original records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, northern division, this 12th day of December, A. D. 1890.

[SEAL.] WILLIAM H. BRADLEY, *Clerk.*

Mr. CULLOM. I will simply say that while I have not a personal acquaintance with many of those gentlemen, I know of nearly all of them, and I understand them to be good citizens and good men.

Mr. HOAR. Are they distinguished Democrats as well?

Mr. CULLOM. I do not know how distinguished they are. They are Democrats, as I understand.

Mr. HOAR. I understand that these gentlemen were representatives of the Democratic party organization in Chicago in 1888.

Mr. CULLOM. I think they were.

Mr. HOAR. Now, Mr. President, we have undertaken to act on the advice of Mr. Samuel S. Cox and his Democratic associates and as they expressly desired, to extend this beneficent system to other parts of the country. What has been the course of the argument on the other side of the Chamber?

There have been some criticisms on the phraseology of the bill. Some of them are easy to be answered. Some of them are just and are to be met by amendments of phraseology. But, in the main, the attack on this bill, from the other side of the Chamber, except so far as it has been mere railing and reviling, has been but a repetition of outgrown theories, overruled arguments, discarded policies, and vanished dreams. One Senator is astonished at the mistakes of Madison. Another has searched the archives for the rejected amendments to the Constitution. He is much impressed by the fact that some States desired to take from the Constitution the power of the nation to preserve its great representative assembly, but attaches no importance to the fact that the whole people determined to leave the Constitution as it is or that seventy years after he and his party associates repeated the same clause in the Confederate constitution.

Another repeats the arguments which were used against the Consti-

tution itself. Another summons from the tomb the shade of Elbridge Gerry, whose fragrant memory, embalmed in the word "gerrymander," will last as long as the Democratic party itself. Another makes an elaborate apology for the holding of slaves, and has discovered that Mr. Jefferson was the author of the Declaration of Independence and was eight years President and held slaves. Another is much disturbed by the decision of the Electoral Commission, a decision which saved the American people from having elections to the Presidency determined by an excited partisan majority in Congress, and alone rendered possible the continuation of the Republic under its present arrangement for the choice of the Executive, a decision which Congress, with almost absolute unanimity, Democrats and Republicans alike assenting, has solemnly affirmed and enacted into law. Others denounce the fifteenth amendment to the Constitution, forgetting apparently that they are themselves sworn to support it against all enemies, foreign and domestic, and that the States they represent are bound in honor, if men ever can be bound in honor, to carry it out in good faith, as the condition to which they were pledged when they were readmitted to the Union and relieved from the penalties of rebellion.

Others rehash old newspaper slanders against John Davenport, but pay no attention to the fact that they have been heard, considered, and Davenport triumphantly acquitted by Judge Blatchford and Judge Woodruff. The fact that there is a Constitution, that there is a fifteenth amendment, that there is a duty to enforce it, that there is an oath to support and defend it, that there are lawful rights of citizens under it, that there is a Government created by it, finds no place in Democratic reflections.

It will be seen, also, that the bitterness of Democratic attack has been almost entirely against the existing law. Nearly all the provisions which are subject of criticism have been law in this country for twenty years.

It is curious to see whence comes the outcry against this measure, so moderate, so just, so beneficent. Arkansas, where the blood of Clayton still cries, unavenged, from the ground, lifts up her hands in holy horror that election inquiries are to be made hereafter under the peaceful shadow of the courthouse. The Democratic riders of Copiah County, Mississippi, who murdered and scourged unoffending Republicans in their dwellings at midnight, are shocked at the suggestion of domiciliary visits. The constituents of the great tariff reformer at Washington, Tex., who raided the ballot boxes and hung the election officers so that they should not bear testimony to the fact, are overcome with emotion that the processes which have answered so well for a hundred years should even be witnessed by an officer of the court.

Mr. REAGAN. Will the Senator allow me to interrupt him?

Mr. HOAR. Certainly.

Mr. REAGAN. Did the Senator ever learn of the hanging of an election officer in Texas?

Mr. HOAR. The Senator from New York [Mr. EVARTS] made the report from the committee, in which it appeared that four election officers were present. There was an attack by masked men on the polls. One man was shot and the negroes who were present were imprisoned and were taken out of the courthouse and hung.

Mr. REAGAN. Not one of the negroes who were hung was an election officer.

Mr. HOAR. He was a Republican. He was a witness, at any rate,

and was hung so that he could not bear testimony to this raid on the ballot.

Mr. REAGAN. He was not a witness. He was defendant, under the charge of murder, and not a witness.

Mr. HOAR. I think the Senator's plea in abatement will be overruled by the court.

The red shirts of South Carolina are afraid they will have to turn out again, and that the eight-ballot-box device will no longer serve its purpose. Louisiana, where, if her Senators tell me correctly, the Democratic governor appoints every election officer throughout the State—I have not been able to find the law to examine it—is afraid that the will of the people shall be interfered with. The Senator who represents Danville is afraid that the race issue will be raised again. Baltimore, where the governor, always a partisan leader, even when himself a candidate, appoints the board who select every precinct officer, and where the armed police are authorized, if they see fit, to turn out every officer and conduct the election themselves, shudders at the thought that local election officers shall not be appointed by the localities.

This is, as I said, a very simple bill to accomplish a very simple purpose. Its friends suppose:

First. That every citizen of the United States is entitled to demand from Congress all legislation which is necessary to protect him in the rights which the Constitution of the United States confers upon him.

Second. It is the duty of Congress to make all laws necessary and proper to carry into execution the powers therein conferred, and among them the power to elect, by the fair choice of the persons entitled to vote, a national House of Representatives.

Third. They find in the Constitution an express declaration that Congress may at any time make regulations as to the manner of holding elections for Representatives in Congress, or alter those made by the States.

Fourth. They find that the authors and advocates of this clause of the Constitution of the United States declared that it was inserted to meet such a state of things as has now actually arisen.

I have here the statements which have already been read in the debate. I wish to read a line or two from each of them, from Mr. Madison, Mr. Rufus King, and Mr. Gouverneur Morris, in order to show how completely they anticipate and overthrow the criticisms which have been made by the Senators on the other side of the Chamber upon the constitutional power. Mr. Madison says:

> The necessity of a General Government supposes that the State Legislatures will sometimes fail or refuse to consult the common interest at the expense of their local conveniences or prejudices. The policy of referring the appointment of the House of Representatives to the people and not to the Legislatures of the States supposes that the result will be somewhat influenced by the mode.

The Senators on the other side claim that the Legislatures should have the uncontrolled right of the matter of ascertaining, determining, and declaring the result, and the right to alter the manner of elections does not include that.

> This view of the question seems to decide that the Legislatures of the States ought not to have the uncontrolled right of regulating the times, places, and manner of holding elections. These were words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power.

Abuses, of course, by the States and by the State Legislatures, which the Constitution intended expressly to prevent.

> Whether the electors should vote by ballot or *viva voce;* should assemble at

this place or that place; should be divided into districts or all meet at one place; should all vote for all the Representatives or all in a district vote for a number allotted to the district—these and many other points would depend on the Legislatures, and might materially affect the appointments.

Whenever the State Legislatures had a favorite measure to carry they would take care so to mold their regulations as to favor the candidates they wished to succeed.

Exactly what these Southern States have done in many cases.

Besides, the inequality of the representation in the Legislatures of particular States would produce a like inequality in their representation in the National Legislature, as it was presumable that the counties having the power in the former case would secure it to themselves in the latter. What danger could there be in giving a controlling power to the National Legislature? Of whom was it to consist? First, of a Senate to be chosen by the State Legislatures. If the latter, therefore, could be trusted, their representatives could not be dangerous. Secondly, of Representatives elected by the same people who elect the State Legislatures. Surely, then, if confidence is due to the latter it must be due to the former. It seemed as improper in principle, though it might be less inconvenient in practice, to give to the State Legislatures this great authority over the election of the Representatives of the people in the General Legislature as it would be to give to the latter a like power over the election of their representatives in the State Legislatures.

Mr. King says:

If this power be not given to the National Legislature, their right of judging of the returns of their members may be frustrated. No probability has been suggested of its being abused by them.

Mr. Gouverneur Morris observed that the States might make false returns and then make no provisions for new elections.—*The Madison Papers*, volume 3, pages 1280, 1281.

Showing that the very purpose of the act was to have the authority over the returns as well as over the places of the election.

Mr. Hamilton goes on to say, speaking of the power of Congress to regulate in the last resort the election of its own members:

I am greatly mistaken if there be any article in the whole plan more completely defensible than this. Its propriety rests upon the evidence of this plain proposition, that every government ought to contain in itself the means of its own preservation.

Mr. President, we find that the Supreme Court of the United States have in a recent most solemn and unanimous judgment made a like declaration, and the court go on to declare that it is the duty of Congress—

to provide in an election held under its own authority for security of life and limb to the voter while in the exercise of this function. Can it be doubted that Congress can by law protect the act of voting, the place where it is done, and the man who votes from personal violence or intimidation and the election itself from corruption and fraud?

In the latter of these two judgments of the Supreme Court it is not only declared to be the unanimous judgment of the court, but Justice Miller states these propositions as propositions in regard to which there is no doubt.

Mr. REAGAN. May I ask the Senator what opinion he quotes from?

Mr. HOAR. I am reading from the opinion of *Ex parte* Siebold, and from the latter opinion I will, with the leave of the Senate, print the extracts in full. I have omitted some of the language of it. Here is the sentence in *Ex parte* Yarbrough to which the judge applies his statement that there is no doubt about the proposition:

It is indispensable to the proper discharge of the great function of legislating for that Government that those who are to control that legislation shall not owe their election to bribery or violence.

Mr. REAGAN. Does the Senator understand that in that opinion and that class of opinions the court were unanimous?

Mr. HOAR. In the first opinion Justices Clifford and Field dissented. The second opinion was not only the unanimous judgment of the court,

but the court say, "These propositions are propositions of which there can be no doubt."

Mr. REAGAN. I think the Senator must be mistaken. The principles of the two opinions were dissented from in a very learned and masterly opinion delivered by Justice Field and concurred in by the other Democratic judge.

Mr. HOAR. That is true in the case of *Ex parte* Siebold.

Mr. REAGAN. And the other follows immediately afterward?

Mr. HOAR. The case of *Ex parte* Yarbrough is two or three volumes later.

Mr. SPOONER. If the Senator from Massachusetts will allow me to make a suggestion, that only shows that the majority of the court in the opinions in both cases had the benefit of the masterly arguments on the other side.

Mr. HOAR. The case of The United States *vs.* Clark was the one which immediately followed, where a dissenting opinion was filed, but in the case of *Ex parte* Yarbrough—I have the reference to it here—to be found several volumes later on, there was no dissenting opinion. It is in 110 United States Reports and the other is in 100 United States Reports. In the case of *Ex parte* Siebold, 100 United States Reports, 371, in which the judgment of the court was delivered by Mr. Justice Bradley, there was a dissenting opinion; but in the case of *Ex parte* Yarbrough, in 110 United States Reports, 651, Justice Miller delivered the unanimous judgment of the court.

Now, Mr. President, having settled these propositions, we further think that the right of the American citizen to cast his vote in safety and in honor is the most precious right he can enjoy under the Constitution. Is not a citizen deprived of his right under the Constitution of his country entitled to look to the Legislature of his country for a remedy? Do you doubt it in the case of an outrage committed abroad? Would any Senator go home and face his constituents if he had not gone to the extent of his constitutional and legislative power to interpose the shield of the American Government in such a case?

Do you doubt it in the case of his title to land or patent? Do you doubt it when he asks you to defend him against railroad or monopoly? You put forth the whole military power of the Government to defend the settler against the Indian, though you have provoked him by a hundred years of wrong. Will you not protect him against the unprovoked outrages of the fiends of Yazoo and Copiah and Danville? Do you doubt that this is a question in which every citizen of the whole country has an interest? Do you stand here seriously to affirm that our fathers created a national Government and gave it no authority to secure the purity of the election of its great Representative Assembly?

Now what is the attitude of the Senators on the other side of the Chamber?

We charge that by election practices in operation in some of the States the seats of at least thirty Representatives have been unlawfully usurped. We charge that the Constitution of the United States has been so violated and overthrown that for fourteen years a minority has controlled the national House of Representatives.

We charge that for four years the Presidency of the United States itself has been held by a usurper.

We say that the case has arisen which Madison and Hamilton and Rufus King and Gouverneur Morris had in mind.

We propose to invoke the courts of the United States, who are in the last resort the shield and protection of all our rights under the Constitution, to secure that the transaction shall be witnessed, that the evidence shall be secured for the House of Representatives, the final judge of the election, and that the court shall have power to see that no injustice is done meantime by giving certificates of election to persons not lawfully entitled to them.

Now, what have the Senators on the other side to answer? Some of them seem to think that their best answer is in railing and reviling at the Senator who has charge of the bill. Their abuse does me an honor to which I should not otherwise have thought of laying claim. Their abuse brings me into a company with which I should otherwise be far too modest to seek admission. How the Democracy of their day reviled Adams and Sumner and Seward and Lincoln. The Senators from Virginia and West Virginia are but repeating with far less capacity what their predecessors who defended the barbarism of their day did to men the latchet of whose shoes I am not worthy to unloose.

In reporting this bill, I but discharge a duty which devolves on me as chairman of the committee of the Senate to which that class of subjects belongs. It is in full accord with my own opinions. But how idle, how unjust, how wicked is it to impute these opinions to prejudice or hatred against any section of my country or any portion of my countrymen. They are opinions which I share with Grant, whose tenderness and kindness toward all his countrymen is now everywhere confessed, whose last recommendation before the Republicans went out of power in the House in 1875 was the force bill of that winter. The little finger of that bill was heavier than the loins of this.

That bill authorized the President to suspend the habeas corpus and declare martial law in four great States for offenses far less than those which have given occasion to this. Numerous national election laws were introduced by Senators in this Chamber at the last session, among them the Senator from Ohio, the Senator from Wisconsin, and the Senator from New Hampshire. This bill came over from the House of Representatives. My function in regard to them has been to soften and mitigate the severity of every one of them. Even the Senator from Nevada, who spoke on Friday, declared his support of the old force bill, and declared his readiness, even now, to establish martial law and to make use of military force if such should be the opinion of his Republican associates.

In reporting and in supporting this measure I am but keeping the pledges made by Grant, and Hayes, and Garfield, and Logan, and Harrison, made by every Republican national convention and by the Republican conventions in nearly every State, by Massachusetts, by Maine, by New York, by Nebraska, by Pennsylvania, by Alabama, by Missouri, by Mississippi. If I err, I err in good company and in obedience to voices I am bound to respect.

Mr. President, it will not be expected that I should take up the numerous and elaborate speeches on the other side in all their detail. I think I shall have done my full duty if I examine what has been said by four Senators, who, between them, seem to me to have covered the whole ground. Each of these Senators stated the case on his side clearly and powerfully. Each of them maintained the decencies of debate. While neither of them forgot that he was a Democrat, neither forgot that he was a Senator. I refer to the junior Senator from Ala-

bama, the Senator from Delaware, the junior Senator from Mississippi, and the junior Senator from Tennessee.

It is not difficult to extract from the speeches of these Senators evidence in abundance both of the necessity for this bill and the righteousness of this bill. The junior Senator from Alabama, usually so calm and temperate, uses the following language. He uses it, be it remembered, in reply to complaints of citizens disfranchised, of seats usurped, of lawful majorities overthrown, of the will of the American people frustrated, of the Presidency itself made the prize of violence and false counting and ballot-box-stuffing. This is his language:

They—

The whites—

are the governing race in this and all free countries, and can not be forced into partnership with the negro on terms of political equality in the Federal or State governments of this country.

He goes on—I omit some sentences now:

That indefensible political crime—

The giving of suffrage to the blacks—

is the fountain whence all our bitter waters flow. Here we find the fatal mixture of black and white suffrage. * * *

It must therefore be conceded—

Says the Senator further—

that all the troubles and dangers and complications confronting this country on account of race conflicts and irreconcilable antagonisms grow out of the stupendous blunder of the fifteenth amendment.

The Senator is not speaking of social equality. He is answering the charge that the Republican vote in the South is unlawfully suppressed. He answers it by asserting that "the white is the governing race," that "they can not be forced into partnership with the negro on terms of political equality in the Federal or State governments of this country." He goes on to denounce the Constitution in this part of it as "an indefensible political crime," as "the fountain from which all our bitter waters flow," as "a stupendous blunder," and says that its mixture of black and white suffrage is "fatal." I know that the Senator in another part of his speech uses language inconsistent with this conclusion. I shall quote that presently.

The number of the two races in Alabama is not far from equal. I think under the census of 1880 the whites had a majority of a few thousand. It is probable that the present census will show that both races there are on a substantial equality in numbers. I do not know how that may be. Yet her honored Senator declares, as his answer to a complaint that Republicans can not vote freely at the South, that the white people "can not be forced into partnership with the negro on terms of political equality" and that the Constitution of his country is an "indefensible political crime" and a "stupendous blunder."

I can see but one meaning to these utterances. That meaning is that the Constitution shall not be obeyed. The Constitution of this country is an infamous crime and the men of whom the Senator is speaking will not obey it.

Compare this attitude, Mr. President, with the franker and manlier one of the Garrison abolitionists. When Mr. Garrison came to the conclusion that the Constitution of this country supported slavery he and his followers went outside of it. The great orator, Wendell Phillips, the great political reasoner, Mr. Garrison, and Edmund Quincy, with six generations of family honor behind him, spent their lives disdain-

ing to take the humblest office at the expense of taking an oath to support the Constitution in which they thought they discovered wickedness. But the representatives of the Southern Democrats enjoy office, they take the oath, they pocket the salary, they hold fast to political power, they swear to support this fifteenth amendment on their honor and on their souls against every enemy, foreign and domestic, and their method of supporting and defending it is to declare that it is an infamous crime, that it is a stupendous blunder, that the rule of suffrage it creates, of partnership between all men on terms of political equality, shall not prevail, that they will not be forced into it, and that it is a fatal mixture, the source of all our sorrows and of all our woes!

I supposed that the Senate Chamber was not a place to discuss the wisdom of the Constitution, but only how it should best be obeyed and enforced. But our friends furnish a curious comment upon their own complaint. The Senator from Indiana told the Senate, with his accustomed eloquence, as a reason for opposing our policy of justice to the negro, that the 8,000,000 bales of cotton raised this year by the South are equal to a cash deposit of $300,000,000, and are the chief security of the country against financial disaster, and that the South has gained three thousand millions in wealth in a decade.

One of the great lights of the church has written a book in which the truth of Christianity is proved from the admissions of infidels. It is easy to vindicate this bill from the admissions of Senators who have attacked it. Who raised that cotton crop? Who earned that wealth? Who restored to the South the prosperity which the rebellion of the white Democrat had destroyed? We rejoice at your renewed and abounding prosperity. The Senator from Tennessee tells us that the 7,500,000 bales, as he estimates the cotton crop, were raised principally by negro labor (page 636), and he further tells us that the negroes, nearly all, are Republicans (page 636). It is the Republicans of the South, according to your own confession, the men who tilled your fields and took care of your wives and children when you were absent trying to destroy your country, who have restored your wealth and have made a bulwark for your country against financial disaster. It is the creators of your own wealth you disfranchise.

"Fatal mixture of black and white suffrage," says the Senator from Alabama. "Will not be forced into partnership on terms of political equality!" We are dealing wholly with securing an honest vote for members of Congress. There never were in the times of which you so much complain, when, as you say, the negro ruled the whole South, more than seven or eight members of that race in Congress at one time. Is it asking too much in a Republic that the creators of three thousand millions of your wealth, that the preservers of your country against financial disaster, that the laborers who, as the Senator from Florida [Mr. CALL] told us the other day, live on their own real estate, which they manage, and get a dollar and a half a day on the average, should at least have their votes counted when they content themselves with sending this small number of their own race to the House of Representatives?

There is another very interesting statement which comes as a contribution to this debate. It comes both from the Senator from Tennessee and the Senator from Mississippi. The Senator from Tennessee says (page 674) that he lives in a city of seventy-five or eighty thousand inhabitants, where the Republican party, mostly colored, has been predominant, and that there has been no trouble of late years. He

says, too, that they have a modified Australian ballot law; that the saloons are closed election day and the police on guard; that it is like Sunday. Men go to the polls as quietly as to church, notwithstanding there is a Republican majority and five out of six of that majority are colored voters.

Pretty good political partners, it seems to me, these colored voters make in the city of my honored friend, the junior Senator from Tennessee [Mr. BATE]. They compare very well with the white Democrats of New York or Chicago, or, if the Senator from New Jersey [Mr. MCPHERSON] be right, the white Republicans of Philadelphia.

Mr. BATE. I know the Senator from Massachusetts will not take it as an interruption when I simply state to him that the peaceful condition of affairs to which I alluded grows out of the fact that the whites do not disturb the negroes, who vote as they please, and there is no necessity for a change.

Mr. HOAR. That is what we want to make the law, and that is a stupendous political blunder and an infamous political crime, according to the Senator from Alabama.

Mr. BATE. That peaceful condition exists now, and therefore there is no reason for changing the law.

Mr. HOAR. There is no harm in having the votes counted then.

The honorable Senator from Mississippi [Mr. WALTHALL] told us the other day of county after county in his State where he says the negro is in the majority, where a large proportion of the public officers there are colored people, and where a state of things similar to that described by the Senator from Tennessee exists. I speak of the junior Senator from Mississippi. Let me read two or three of his contributions to the facts of this debate. He says:

There are more negroes in office this day in Bolivar County—

Which he says gave Harrison 800 majority, Garfield 757, and Hayes still larger—

There are more negroes in office this day in Bolivar County than in any other county in the United States, and more than in entire States in the North which have always been under Republican control. Out of forty-four officeholders in that county thirty-one of them are negroes, and, if there be a Northern State with half as many, I will thank some Senator to name it. That is a wealthy county, and the white population is intelligent and enterprising, and yet every constable in it is a negro. They have thirteen negro justices of the peace out of fifteen; two members of the board of supervisors are negroes, and so are the coroner and ranger, assessor, treasurer, circuit clerk, and one representative in the State Legislature, the county being entitled to but two.

I have said thus much about this one county, because of all the stereotyped memorials which purport to come from Mississippi, no one of them has one-fourth, and some of them not one-tenth, as many names appended as that from Bolivar County.

Then he goes on and says about other counties:

But this county does not stand alone, and, while it is not a type of others in the State differently situated, its condition does not materially differ from that of other counties in the same region, all in the Congressional district from which most extravagant and imaginative reports of election wrongs have been given to the public in newspapers published elsewhere and from other sources.

I suppose that is in what is called the "black district," the "shoestring district." I do not know about that.

Adjoining that county on the north is Coahoma, which has one white and one black representative in the State Legislature, two colored members of the board of supervisors, nine colored justices of the peace, and six colored constables. That county gave its vote to Hayes, to Garfield, and to Blaine, and Mr. Harrison carried it by nearly a thousand majority.

Here are a dozen counties, I think—about nine counties—which the Senator described and goes on to say that their condition is substantially the same as that of Bolivar:

Adjoining Bolivar on the south is Washington County; it sends a colored representative to the State Legislature; its circuit clerk, coroner, and ranger, one-half of the justices of the peace, and one-half the constables are colored men, and there are two colored members of the city council and two of the city police in Greenville, the county site, a wealthy and thriving city with eight or ten thousand inhabitants.

Next below is Issaquena, whose only representative in the Legislature is a colored man, and the clerks of the circuit and chancery courts, the assessor, coroner and ranger, two supervisors, six justices of the peace, and seven constables are colored men; a white Republican is county surveyor, and out of thirty-one officers in the county but ten are filled by Democrats. This county, from 1876 to 1888, inclusive, has never failed to give a majority for the Republican candidate for President, and in 1884 Mr. Blaine carried it by more than five to one.

Adjoining Issaquena is Sharkey County, which sends but one representative to the Legislature, and he a colored man, and there are a number of other colored officers in the county, including several justices of the peace and constables.

Tunica County, which is in that same section, gave Hayes nearly 1,200 majority, and at every Presidential election since has given decided majorities for the Republican candidate.

Adams County, the home of John R. Lynch, who is loud in his complaints of the white Democracy of Mississippi, in three out of the last four Presidential elections has cast its vote for the Republican candidate, the majorities ranging from 700 to 1,200. In both the counties last named colored men have been repeatedly elected to office, and an educated colored Republican named Bowles, returned from Adams County to the last Legislature, took a high stand in that body, as did some others of his race.

Where, then, is the mighty harm? Where is the danger to civilization? What is the terror in letting this race have their votes honestly counted? Why do you not let them even elect a dozen of their own race to the House if they like, the race who by your own confession have manifested the most sublime example of patience and forgiveness known to history, the creators of your new wealth, the shield of the country from financial disaster, and who in the cities and counties where they have unquestioned sway, according to these Senators, show you communities which are models of order and peace?

But the Senator from Alabama says in another part of his speech:

It can not be denied that each State has exercised the power judiciously and in good faith, so as to secure free and fair elections.

It can not be denied! But it is denied. It is denied in the platforms of a great national party. It is denied in the messages of Presidents. It is denied in the complaints of millions of injured citizens. It is denied by the reports of investigating committees. It is denied in many a solemn judgment of the House of Representatives. It is denied by his associate, the Senator from New Jersey, who asserts that free and fair elections do not exist in the chief city of the great State of Pennsylvania. It is denied by the Southern Democratic press, by the official utterances of Democratic governors, and the confessions of Democratic statesmen. It is denied by the logic of the Senator's own speech and by the history of his own State.

Has the Senator read the history of the more than two hundred contested-election cases in the House? Has he forgotten the history of the Fourth district of Alabama? Does not he know that Shelley, the Democrat, was three times certified by the Alabama election officers, though in a minority of thousands? The case was so gross that even the Democratic House was compelled to seat the Republican contestant, although they put off the act of justice until late in the second

session. Five times have the Republicans, as I claim and as I firmly believe, carried that district by large majorities.

Five times have they been counted out by the local election officers. Three times have the House done a tardy justice to the man really elected. I remember the Republican member, Mr. Craig, calling upon me at the end of the Congress of 1885, in which though really elected he had filled his seat for about five weeks only, to ask me whether I thought it his duty to waste his life in contesting a district where he could always be elected, but never be returned.

How can the Senator say that no man denies that the States secure fair elections, when his colleague in the other House, in an earnest speech against this very bill, says:

The negro vote has not been wholly free in the South. In some precincts it has been kept from the polls by the domination of the whites. In others it has not been counted as cast.

What says the just elected governor of South Carolina in his inaugural message?

When it is clearly shown that a majority of our colored voters are no longer imbued with Republican ideas the vexed negro problem will be solved and the nightmare of a return of negro domination will haunt us no more.—*Gov. Tillman's Inaugural*, December 4, 1890.

Let the negro but turn Democrat and according to the present representative of the State of South Carolina this negro problem will be at an end and the Southern Democrats will wake up from their nightmare. Why, what says Mr. Watterson, the chief Democratic editor in that part of the country?

I should be entitled to no respect or credit if I pretended that there is either a fair poll or count of the vast overflow in States where there is a negro majority or that in the nature of things present there can be.

Now what says the governor of West Virginia, Governor Wilson, in his biennial message in 1889?

Reproach has been cast upon our State as never before by illegal, fraudulent, and corrupt voting in almost every county within its borders. This is so palpable that "he who runs may read."

The capitations of 1884 were 133,522, and the entire vote, after the most active political campaign ever made in the State, 137,527. The capitations of 1888 were 147,408, and the vote 159,440. The difference in the capitation and the vote in 1884 was 4,065; in 1888 it was 12,032. This shows an increase of votes in four years of 21,853, which, if legitimate, would indicate a population of 900,000 and an increase in four years of much more than 100,000. It is certain that no such increase has taken place.

Tuesday, December 30, 1890.

Mr. HOAR. Mr. President, just before the adjournment yesterday I had cited a good deal of testimony, which I think would be enough to convince even the honorable Senator from Alabama that it is denied that the States of the South have made legal provision to secure free and fair elections; that it is not only denied in the national platforms of a great party, denied by the representatives of many States, denied by many solemn judgments of the House of Representatives, but that it is denied also by great authorities from his own State, from his own party, and from his own section of the country. I had just read the statement of perhaps the principal editor in the northwestern portion of what is called the South, who says that if he did not deny it he should be entitled to no respect whatever. Let me read a corresponding testimony from the principal paper in the southeastern portion of the South. the Charleston News and Courier, speaking of the device enacted into law by the Legislature of that State known as the eight-

ballot-box law, under which there being eight boxes at each poll it is contrived that the Republican or the colored man, if he be ignorant, shall be unable to tell into which of the eight his ballot for a member of Congress ought to go, and thereby the whole vote is lost.

In regard to the eight-box law I have already read a statement of the governor of South Carolina.

The eight-box law, though it has served its purpose well, is an evasion after all. It would be far better and far manlier—

Says the Charleston News and Courier—

to grasp the difficulty squarely at once and amend the constitution of the State so as to impose an educational qualification upon the voters. It is beneath the dignity of the State to admit that there is no statesmanship in South Carolina to face the consequences of ignorant suffrage and overcome them without political trick or subterfuge.—*Charleston News and Courier*, December 5, 1888.

That is what the leading Democratic paper of the State and the South says. What is the political trick and subterfuge? Gentlemen speak sometimes as if we were harsh in our judgment or in our expression about our Southern brethren. The great Democratic paper of the State is speaking of the action of the State itself, of its solemnly enacted law, of the result of the deliberations of its statesmen and the will of its people so far as that people have expressed their will in the ballot-box law. Has anything ever been uttered by the wildest radical, by the most extreme fanatic, by the bitterest opponent of slavery or of Southern methods, on this floor or elsewhere, importing a tenth part of the severity of the statement of a great leading Democratic newspaper, a guide of public sentiment, that that State, so renowned for its chivalry and its honor and its courage, is resorting to a political trick and subterfuge to get rid of the constitutional rights of a majority of its citizens?

Mr. President, the evidence on this point from South Carolina I might multiply from this moment till the going down of the sun. Here is another statement from the Charleston (S. C.) News, which is said by the paper which copies it to be at once the ablest and most candid paper in the South:

Starting with the assumption that it is the settled purpose in South Carolina that the intelligent and responsible citizens shall rule, whether they are nominally the majority or not, what course shall the people of the State take to make themselves safe and avoid the horrible strains of such elections as the last, with their uncertainties and manifold unpleasantnesses?

I am glad that there is somebody who thinks that the processes of the South Carolina election to which the paper referred were a horrible strain.

Here are some resolutions from the Tiger Democratic Club reported in the Greenville Mountaineer, Greenville, S. C.

The club being called to order, Captain Jennings addressed the meeting in a very enthusiastic and stirring speech.

Here is what it says:

Resolved, third, That prior to the election held on 2d November last we urged upon our colored citizens the importance of voting with the Democratic party—

It seems the colored vote was well enough if it would vote with the Democratic party—

the party from whom they derive all their support and recognition.

Yet, in spite of our pleading, they almost to a man voted the Radical ticket.

Fourth. That from henceforth we pledge ourselves to discard any man, white or black, who voted with the Radical party, and that we will not rent any of our lands to or have upon our premises such men until they prove their sincerity to an honest government—or the Democratic party—by their works and deeds.

They seem to recognize some distinction between the two ideas.

Here is another extract from the Charleston News and Courier of December 12, 1888:

The eight-box law, necessary as it was and beneficial as its operation has been, is demoralizing to the people of the State. It must lower the younger men in particular in their own eyes to see that the spirit of our institutions is violated at every election.

I should think so, Mr. President. I should think that it might lower the young men of that gallant State in their own eyes to belong to a State which their own leader says is practicing a political trick and subterfuge, and in which they are to be educated in the processes of fraud, false counting, and perjury as a part of the regular and ordinary administration of a republican government.

Now let us go to the State of Mississippi and see whether the denial exists there which my honorable friend from Alabama thinks can not exist anywhere. I have here an extract from the Commonwealth, published at Jackson, Miss., the capital of the State:

Let all good citizens act on this principle and the worst workings of the fifteenth amendment will no longer be felt, if that monstrous enactment does not wholly fall into innocuous desuetude.

Why, Mr. President, the Democratic party of the United States in the year 1876, repeating in substance what it had affirmed in 1872, unanimously, the representatives of Mississippi joining with their brethren throughout the country, made this statement in regard to the fifteenth amendment:

For the Democracy of the whole country, we do here affirm our faith in the permanence of the Federal Union, our devotion to the Constitution of the United States, with its amendments universally accepted, as a final settlement of the controversies that engendered civil war.

The Democratic party of the United States, then as now controlled by the Democracy of the South, solemnly promised, not merely acquiescence, but devotion to this "stupendous crime and blunder," as the Senators on the other side now call it. Is it we who are to be reproached with this thing when you made the bargain with us and pledged not merely your official oaths, but your honor as men and gentlemen that you would give your devotion to this constitutional amendment if you only were to be brought back into your old condition in the Union and freed from the consequences of rebellion? Here is an extract from the Greenville Times, another leading Mississippi paper:

Our side may no more be maintained by evasions of the fact of the nullification of these negro majorities. We doubt if these ever deceived anybody, and now they would be traversed by a thousand authoritative contradictions. We had just as well accept the state of facts presented by the Republican leaders, and make our defense accordingly.

That is the Greenville Times.

But, Mr. President, what necessity for citing local newspapers, however eminent, or public men, however distinguished, in the face of the recent action of the people of Mississippi in adopting the constitution which has been so well discussed and stated by my eloquent friend from Wisconsin [Mr. SPOONER]? Nobody, I suppose, will deny that that constitution was adopted and framed for the purpose of overthrowing the government by a majority in the State of Mississippi. The old constitution of the State of Mississippi contained, as I understand, a clause for its amendment, which was not observed.

The Legislature provided for the calling of a constitutional convention without submitting that request to the people, and the constitu-

tional amendment itself enacted the constitution, and it has been or is to be put in force without any submission of the constitution itself to the people. That convention contained, if I am rightly informed, but a single person belonging to the race which constitutes a large majority of the people of that State. The county after county which the distinguished Senator from Mississippi [Mr. WALTHALL] spoke of as peaceful and quiet and flourishing and prosperous, administered by the colored people there, with colored judges, colored treasurers, and colored county officers, were not permitted to send a single man of these admirable governors and excellent citizens who had created the cotton crop of the South and restored its prosperity, according to the statement of the Senator from Tennessee [Mr. BATE], which I quoted yesterday. Now what is it proposed to do?

On and after the 1st day of January, 1896, the following qualifications are added to the foregoing—

Which are the ordinary qualifications of residence and age.

Every qualified elector shall be able to read any portion of the constitution of this State, or he shall be able to understand the same when read to him, or give a reasonable interpretation thereof. A new registration shall be made before the next ensuing election after these qualifications are established.

In other words, the election officers of the State of Mississippi (whether they are appointed by the governor or by a board appointed by the governor, or elected by the people of localities, I have not looked to see), however chosen, are to pass upon the question, in the first place, in regard to the capacity of a man to read and write. Then you come to the men who can not read and write, who were I do not know what per cent. of the people of Mississippi by the last census, but I suppose from 40 to 50 per cent., counting the colored people and the white; perhaps that is too much, and Senators will correct me if they remember the exact percentage. But, however it may be, it is an enormous percentage of the population of Mississippi, and when the Democratic white man, who can not read the constitution, and the Republican black man, or the Republican white, who can not read the constitution of the State, present themselves to those local election officers, they are to be accepted or rejected according as that election officer shall think their interpretation of the constitution of Mississippi is reasonable or not.

Mr. SPOONER. Whether their interpretation is right or his is wrong.

Mr. HOAR. Yes, whether their interpretation is right or his is wrong. No other authority is to judge. Mr. President, the American people are not blind——

Mr. GEORGE. Will the Senator allow me to interrupt him there?

Mr. HOAR. Certainly.

Mr. GEORGE. Does the Senator mean to be understood as making a complaint that there is no provision for a revision or supervision of the determination of the registrars as to the right of a man to vote in the State? If he does, will he be kind enough to inform me whether any State, except Maryland, has made a provision of that sort? I put two questions to the Senator, which I hope he understands.

Mr. HOAR. I understand them both perfectly.

Mr. GEORGE. Very well.

Mr. HOAR. I am stating the fact. The complaint is one which I think the people of Mississippi will some day make themselves.

In the next place, I do not understand that it would be practicable

to revise between the presenting of the ballot and the dropping it into the box by any other authority than the determination of the local election officers, and I do not suppose that is done anywhere in the United States or can be conveniently done anywhere in the United States.

Mr. GEORGE. Except in Maryland, as far as I know.

Mr. HOAR. I do not believe it is a very convenient arrangement there. In my State the election officers are liable to suit for damages if they wrongly reject a vote and the voter is deprived of his right.

But, Mr. President, the people of the United States are not blind, the Senate is not blind, the Senator from Mississippi is not blind.

Mr. GEORGE. The Senator will allow me.

Mr. HOAR. I will hear the Senator in a moment when I finish this sentence.

Mr. GEORGE. All right.

Mr. HOAR. If they were, their eyes would have been opened by the declaration of Judge Calhoun, the president of that convention, who avowed the purpose for which it was gathered. Now I will hear the Senator.

Mr. GEORGE. I was just going to ask the Senator from Massachusetts if it would interrupt him at all if I should inform him that the constitution of Mississippi, which he is criticising, makes express provision for a revision of the registration books as made out by the registrars.

Mr. HOAR. Revision by whom?

Mr. GEORGE. It requires the Legislature to make a law on that subject, which has not been enacted yet.

Mr. HOAR. There is no such provision so far.

Mr. GEORGE. It is a mandatory provision in the constitution to the Legislature.

Mr. GRAY. Has the Legislature met since the constitution was adopted?

Mr. GEORGE. There is a mandatory provision in the constitution directed to the Legislature, which says that it shall be provided by law, by appeal or otherwise, for a revision of the registration laws so that persons who have been improperly and illegally registered may be stricken from the rolls and persons who have been illegally or improperly rejected may be put upon the rolls.

Mr. HOAR. Oh, well, that is but a step further in the subterfuges of the Mississippi constitution, in my judgment.

Mr. GEORGE. Let me reply once more. Then, Mr. President——

Mr. HOAR. I do not care about engaging in a running debate. If I understood anything——

Mr. GEORGE. The Senator replied to me. Now, when he complains, as others on that side of the Chamber have complained, I will show when I come to discuss this question that the sole and final power to determine upon the eligibility of an elector was vested in the registrar, and when he complains that no provision has been made for an appeal, as the Senator from Wisconsin stated——

Mr. HOAR. Well, Mr. President, I can not yield further.

Mr. GEORGE. Very well. Now when I show that such a provision has been made, the Senator from Massachusetts kindly informs us that that is another subterfuge.

Mr. HOAR. I did not use the word "registrar." I said there was no appeal from the election officers. The Senator from Mississippi now

replies that there is a clause in the constitution of his State under which the Legislature is directed to provide for a revision hereafter, and that revision hereafter is to be made by somebody who is to be for that purpose in the nature of an election officer. It is but one Democratic politician behind another.

Mr. GEORGE. Mr. President, I wish to say——

Mr. HOAR. I do not propose to yield.

Mr. GEORGE. All right, then. Go on with your mistakes and I will correct them at the proper time.

Mr. HOAR. I will yield for a correction if I make a misstatement of facts.

Mr. GEORGE. I was going to inform the Senator from Massachusetts that in Maryland——

Mr. HOAR. Mr. President, I do not yield for that purpose.

The VICE PRESIDENT. The Senator from Massachusetts declines to yield.

Mr. GEORGE. Very well.

Mr. HOAR. I will not have any doubt about it. Go on.

The VICE PRESIDENT. The Senator from Mississippi will proceed.

Mr. GEORGE. The Senator stated that whoever might be charged with the duty of revision and determining appeals upon the question of registration would be but an election officer. I wanted to call the Senator's attention to the fact that in the State of Maryland provision is made by statute for a revision of the registration lists; that is, to determine whether a man has been properly or improperly registered, and that is left by appeal to the judges of the supreme court or of the circuit courts of the State.

Mr. HOAR. Mr. President, as I was saying, if anybody's eyes are blind on this subject I think they would be opened by the declaration of Judge Calhoun, the president of that convention. Here is what he said:

If asked by anybody if it was the purpose of the convention to restrict negro suffrage he would frankly answer: "Yes; that is what we are here for." The fiat had gone forth that fraud, force, and intimidation must cease.

I take it that Judge Calhoun is speaking not of the negro now, but of the white Democrats of Mississippi, and it is their fraud and force and intimidation that must cease.

And if the convention failed to insure white supremacy by peaceful methods, he would, in case a negro were hereafter killed in a political riot, regard himself and every member as accessory to the murder.

That was an open secret all over the United States, as my friend on my right [Mr. SPOONER] suggests.

Mr. President, I have here a half dozen newspaper extracts from important papers in the State of Mississippi, one in 1882, one in 1881, and a recent one of which I have not the date upon the paper.

Has the Senator from Mississippi forgotten the proceedings in Jackson and the proceedings in Greenville? Here are the resolutions adopted in the city of Jackson:

Resolved, That having received the assurance—

My honorable friend from Mississippi speaks of these well-governed negro counties—

that hereafter no negro alderman or negro policeman will be a part of the city government, and that in the election to be held on Monday next none but white

men will vote, the negroes have voluntarily agreed to stay away from the polls: Therefore,

Be it resolved, The Democracy of the city of Jackson pledge that, so far as it can govern, the election shall be fairly and peaceably conducted.

These proceedings took place in the city of Jackson, though the paper from which I am reading is the Greenville Times. I will add, without reading, two or three other of these extracts from Mississippi newspapers to a similar effect:

BULLDOZING DEPRECATED—THE JACKSON ELECTION CONDEMNED BY SOUTHERN PAPERS.

[Greenville Times (Ind.).]

There is food for thought in this conspicuous election of a small municipality. It is perhaps the most glaring and signal illustration yet contributed to the record of the utter helplessness of the negro when the color line is drawn, and of the suppression of his vote. We will sketch the situation and its development. Mayor McGill, a Republican, met the gathered storm aroused by young Mitchell's tragic murder by this singular proposition: that the negro would be shut out from the pending election and only white men permitted to vote. This proposition was made to allay a very evident determination to elect Henry by any means. Appalled by what they saw, the negroes issued a proclamation that they would in a body stay away from the polls.

Under this dictum, indorsed by all white men of both parties and all feuds, the election was held. It bears its own comment. No single event has so truly laid bare the Southern situation, has so effectually dragged the negro question from "the silence of the covered furrow."

A BAD BLUNDER FOR THE DEMOCRACY.

[Memphis Appeal (Dem.).]

Somebody has blundered. Somebody in Jackson is responsible for a very bad blunder, for a very bad business that has already been caught up by the Republican politicians and made the justifying basis of a bloody-shirt campaign. Thus "bad begins, but worse remains behind." Politics are among the most practicable of the affairs of life. When they are regarded or treated of from any other standpoint, failure and disaster are sure to follow. An extremity in emergency so grossly offensive and repugnant to the Constitution of the United States and of the State should never have been confessed. No body of men valuing their own liberties should permit themselves to go upon the record as responsible for the subversion of the liberty of others. Like a two-edged sword, such an outrage cuts both ways. Just at this time it is very unfortunate. Every member of Congress from Mississippi and each of the Senators will feel the effects of it, and every Northern Democrat will cower under it. Great as is the reputation he has made and strong as he is before the people, Mr. Cleveland will feel it, and it may be that Mississippi itself, on account of it, will be made the subject of an anger-producing Congressional investigation that may cost the National Democratic party success in November.

NO VOTES FOR NEGROES—AS MUCH AS THEIR LIFE IS WORTH TO GO TO THE POLLS IN JACKSON, MISS.

[Special dispatch to the Press.]

ST. PAUL, MINN., *February 4.*

Something over a week ago F. C. Nickels, of Minneapolis, addressed a letter to judge John McGill, mayor of Jackson, Miss., asking what the real facts were about the recent troubles at the municipal election, which a Senate committee is to investigate. In reply he received a letter, in which the following language is used:

"What you may have seen stated in the papers in reference to the recent municipal election in this city does not tell the whole story as it is. The impression has been sought to be made in the public mind abroad that the government of this city was corrupt and vicious and ruled and dominated by negroes. Such is not the fact and never has been true. I have been mayor of this place fourteen years, having been elected seven successive terms. I am forty-nine years of age, and have lived for forty-two years of that time in this city.

"I was a soldier in the Confederate army and served through the war. When the surrender took place I also surrendered and ever since the war have been, I believe, a good, loyal citizen; at least, I have tried to be. Politically my fortunes have been cast with the Republican party, and this is about the sum and substance of my offending. The city government consists of a mayor and board of six aldermen. Of these five have been white men and Democrats and one a Republican and colored man. The other officers of the city are a mar-

shal, assessor, collector, clerk, and treasurer. The marshal, assessor, and treasurer were all white men and Democrats, and the clerk and collector were both Republicans, the first named a colored man and the latter a white native of this city. The jailer was a colored Republican. The police force, consisting of six, was constituted as follows: Four white Democrats and two colored Republicans. You will be able to judge from this statement how much truth there may be in the statement that it was a negro-ridden government. Four of the former members of my board of aldermen were re-elected on the ticket with my opponent. Of course they are all white men and Democrats.

"I inclose you a copy of the celebrated 'Red Circular.' They were very plentifully distributed just prior to the election, but have been suppressed as far as possible since, and it is now difficult to get a copy. The unfortunate occurrence on Christmas Eve night, which resulted in the killing of a young white man with a knife in the hands of a negro and the shooting and killing of the negro at the same time, was one that could not have been foreseen by me or my officers, and hence could not have been prevented. It was made the pretext for a bitter attack upon my administration, however, and the most violent and inflammatory speeches and publications were made to arouse the most bitter and vindictive race prejudices. The only thing that prevented riot and bloodshed was the fact that the negroes resolved not to vote or in any way participate in the election. Had they attempted to do so some of them would without doubt have been killed.

"The white and colored registered vote of the city is nearly equal. Not a single colored man was permitted to vote at the recent election. They were as completely disfranchised as though they had never had the privilege of citizenship conferred upon them. These are facts that can and will be established in the testimony of witnesses whose standing and credibility in the community can not be attacked nor impeached. There are some Democrats here who will bear testimony to the truth of all that has herein been stated.

"JOHN McGILL."

W. H. Gibbs, an ex-Union soldier who served three years in the war in the Fifteenth Illinois Volunteers and who has been in Mississippi ever since the war, adds a letter in which he makes the following statement:

"I say without hesitation that the recent action of the White League Democracy in the recent election has been the most defiant and outrageously unlawful and unwarranted effort to deprive citizens of their rights and overrule the Constitution and laws of the country that has ever occurred here or elsewhere."

The "red circular" contains this paragraph:

"Driven by no sudden passion or impulse, but actuated by a firm and deliberate sense of the duty we owe to ourselves and to our race, we hereby warn the negroes that if any one of their race attempt to run for office in the approaching municipal election he does so at his supremest peril, and we further warn any and all negroes of this city against attempting at their utmost hazard by vote or influence to foist on us again this black and damnable machine miscalled a government of our city."

MOB RULE IN MISSISSIPPI—IT IS FULLY INDORSED BY THE NATCHEZ DEMOCRAT.

[Natchez (Miss.) Democrat, August 6.]

The recent course pursued by the people of Yazoo County with regard to the independent movement in that county, headed by some of its best men and meeting with the approval of a large number of white people who have heretofore acted with the Democracy, is indicative of a determination on the part of the people of that section at least not to brook the possibility of again coming under the rule of ignorance and Radicalism. Those who led the independent movement depended, doubtless, principally for success on the support of the Republican and colored elements of the county, and it was considered that the success of the movement would be simply the inauguration of radical misrule.

It is easy to perceive in every independent movement throughout the State a disposition to make use of the Republican and colored elements, as in every case independency has resolved itself into the most inveterate and malignant hostility to the party which now embraces the great mass of the white and intelligent people of the State. In general these independent party movements are led by disappointed aspirants for office, who flatter themselves that they have white friends enough to form a nucleus, around which they always calculate to collect the negroes and the opponents of the present political organization which rules the State. In nearly every instance an independent outbreak is a calculation on the part of some dissatisfied patriot to ride into office on the support of the very part of the population which gave to Radicalism strength, and which came so near effecting the complete ruin of the South. The leaders, knowing that they composed a part of the party which redeemed the country from the clutches of Radicalism, unfortunately believe themselves to have been a far greater part than they actually were of the general uprising that overthrew

the Radicals and redeemed the State. They overestimate their own importance and place too much reliance upon the little squad of personal friends they can gather around them.

In the present temper of the people of the South these independent movements must almost invariably fail. The people have too recently thrown off the incubus of Radicalism and carpetbagism to be willing for some time to come to run any risks of again losing the control of their own affairs. All efforts of independency have been abortive, although they have been directed by those who were the most radical in the Democratic party. It is only necessary, in proof of this assertion, to point to the efforts made two years ago in an adjoining county in which were engaged some of the most prominent of those who carried the county a short time before over an immense Radical majority; men who had led the van of the boldest, when in the right, and supported by public sentiment, yet these men, when they attempted to oppose the sentiment of their community, were hooted down and jeeringly chased from their own platform. This and other instances which we might easily point to, taken in connection with the recent action of the people of Yazoo County, show very clearly that the people of the State are not prepared for and will not submit to independent movements which have a direct tendency to re-establish Radical ascendency in the several counties of the State.

Everywhere, so far as we can learn, there is a disposition to give a fair proportion of representation to the colored people as a race and to make fair compromises with them upon the basis of race, but in many portions of the State, indeed almost universally, there is a determination to make no compromise with the dead and buried Republican party in the South. Independency thus far in this State has meant Radicalism, and it has been met as such, and we doubt not will, for some time to come, be treated with the same severity that it has met all attempts to revive Republicanism.

I think the Senator from Alabama will by this time be disposed to agree with me that it is denied that the States have secured free and fair elections, and that it is denied by an overwhelming concurrence of Democratic authority. Why, his associate from New Jersey [Mr. McPHERSON], like his colleague in the other House, denies it in this very debate, although the Senator from New Jersey attributes the wickedness to the Republicans in the city of Philadelphia; but the honorable Senator from Alabama [Mr. PUGH] makes some objections to the constitutionality of this measure and some to its details, with which I ought briefly to deal. He says:

The framers of the Constitution confided to the Legislature of each State the power of "choosing" their Senators without being subjected to any Federal supervision or certification except in the Senate itself.

I can not understand what my honorable friend from Alabama means by that statement.

First. In the case of the Senate the national authority does prescribe the certifications, and in sections 14, 15, 18, and 19 it orders the two houses of the Legislature to convene and make a declaration. It orders the governor to sign and the secretary to countersign. The whole process of holding the election, of ascertaining the result, of declaring the result, of certifying the result, is a United States process from beginning to end in the case of a Senator, although the United States takes certain State officials or bodies or functionaries and makes them its officers or agents and instruments for that purpose.

Second. The United States authority prescribes to the Legislature the method of its own action. It compels it to merge its two houses into a joint assembly and at a particular time to lay aside all other business of the State and devote itself to that. Senators question the constitutionality of that enactment. If they do a good many of them will question probably the constitutionality of their own election.

Third. If this authority be established in the case of the choice of Senators, which the Constitution commits to an independent legislative body, a portion of it exists in the case of the choice of Representatives who are elected by the people of single districts, not elected by

the people of the States, but only, as the Constitution says, by the people in the States.

Fourth. The power to prescribe the manner of holding elections, involves the power to see that those regulations are obeyed and to ascertain the result of that obedience.

This has been directly adjudged by the Supreme Court.

Fifth. The establishment by the Constitution of a tribunal to determine the title to the seat, namely, the House, which is the final judge, involves the right to provide for obtaining and preserving the evidence on which the House may act, and that is enough to vindicate this bill, if it required anything else.

It would have been just as wise and safe for the Constitution to make the Legislature—

Says the Senator—

the custodian of the power of regulating the manner of electing Representatives as of the manner of electing Senators.

As I have said, the national provision in regard to the manner of electing Senators is much the more stringent. It merges the two bodies into one. It creates a body not created by the State constitution to verify results.

The Senator from Alabama falls into the same error as all his Democratic associates.

The whole fallacy and mistake of the position of Senators on the other side is this: They constantly endeavor to substitute the defeated and rejected policy for the accepted and established policy. When we tell them what the Constitution is, they reply that some good man somewhere thought it ought to be otherwise. When we rely on the existing fundamental law as our fathers left it, they answer, "Oh yes, but there were State conventions that proposed an amendment." When we rely on the legislative construction established for a hundred years, they answer that somebody said it would have been better to construe it differently. When we cite the last judgment of the Supreme Court, they answer us with a phrase of an old report of Mr. Webster. When we ask them to obey the fourteenth and fifteenth amendments of the Constitution, the last solemn expression of the people's will, which they have all sworn to execute, they answer that negro voting does not work very well in practice, and that we ought to be governed, not by the Constitution, not by our oaths of office, but by the lesson we ought to learn from the popular vote of 1890.

The Senator from Alabama goes on to say:

It was a grave mistake of Mr. Madison that he should have fallen into this mistake against the protestation of Massachusetts.

I think the people of Massachusetts prefer in this respect the wisdom of Madison to the wisdom of Elbridge Gerry, who voted against the Constitution and whose contribution to this subject is found in the word "gerrymander."

I alluded a little while ago to the Senator's arraignment of the Constitution of his country. He charges us with a stupendous blunder and a terrible crime in conferring the suffrage on what he calls ignorance and barbarism.

I think the Senator grievously errs in his statement. The Constitution of the United States confers no privilege on negro ignorance, on negro incapacity, on negro criminality. It does not define, declare, or confer the right of suffrage enjoyed by anybody. It leaves the States

to determine the qualification of suffrage for themselves. The constitutional right of suffrage belonging to the negroes at the South depends to-day on the full and free consent of the white Democrats in every State south of Mason and Dixon's line. In nearly every one of them, the constitution having been revised since 1874, the governing white class has conferred it voluntarily and by its own affirmative action. All that the Constitution of the United States declares is that you shall not deny it to any man whom in all other respects you find fit for it simply because he is a negro. If the ignorant negro ought not to vote, deny your suffrage by the same rule to the equally ignorant white man and the evil is cured.

I wish to repeat this proposition and submit it to my honorable friend from Alabama for his consideration. The gift of suffrage to the negro of Alabama, if he be ignorant, if he be barbarous, if he be criminal, if he be of low intelligence, was the act purely and solely of the white Democracy of Alabama when they revised their constitution, and that is true of nearly every other Southern State. If the negro be ignorant, if he be barbarous, if he be criminal, deny to him the suffrage, as you have the constitutional right to do.

All that the Constitution says is that if you find him in all other respects fit for the suffrage you shall not deny it to him because of his race or his color or his previous condition. Make a rule which under precisely the same circumstances and under precisely the same condition of facts will deny the suffrage to the white man who has not got what you think the proper qualifications. That is all that has ever been required or demanded of you. If ignorance is a disqualification of the negro, is it not likewise a disqualification of the white man? If criminality is a disqualification of the negro, is the white criminal any the better ruler of States? Make your rule as broad or as narrow and your lines as high or as low as you please. The only thing the Constitution of the United States says to you is that if you find a negro in all respects fit to vote you shall not deprive him of his suffrage because he is black.

Mr. GRAY. Will the Senator from Massachusetts allow me to ask him a question?

Mr. HOAR. Certainly.

Mr. GRAY. I do not wish to interfere with or to intrude myself in any discussion in relation to the constitution of Mississippi, that State being represented here by Senators who can at all times defend her institutions and her constitution; but I wish to inquire in all good faith in what respect that provision of the constitution which the Senator has just read contravenes the inhibition of the Constitution of the United States against a discrimination on account of color in conferring the elective franchise.

Mr. HOAR. Not in the least as far as I know. What the Mississippi Democratic authorities, whom we have quoted and of whom quite a number more will be quoted before we get through with this debate, say of it is not that it undertakes to do that on its face and by its terms, but that it provides an artifice, a fraud, a trick, that it puts it into the power of election officers who are all white men to hold that a Republican does not understand the constitution of the State or does not give a reasonable interpretation of it, and that a white Democrat does. That is the point.

Mr. GRAY. The Senator will allow me to ask him a further question. I ask him whether it is not quite necessary to his argument to

assume that, if they be Democratic election officers, they will always violate their oath and discriminate against Republican electors in the administration of the law.

Mr. HOAR. The Senator can put that question——

Mr. GRAY. I ask if that assumption is not necessary to the Senator's argument.

Mr. HOAR. I do not think it is.

Mr. GRAY. If it is not, then I would ask the Senator whether this very bill he is discussing, the Federal elections bill before us, does not provide that at every poll supervised there shall be a majority of Republican election officers for the time being.

Mr. HOAR. No, sir; it does not.

Mr. GRAY. How are you ever to trust them when you will not trust the others?

Mr. HOAR. There is no provision that there shall be a majority of Republican officers.

Mr. GRAY. Is there any provision in the constitution of Mississippi that there shall be a majority of Democratic election officers?

Mr. HOAR. Of course there must be a party majority, but we have put our elections in the best place we can find for them, and that is in the judges. I am coming to that point presently, and I should rather not anticipate that part of my argument.

Mr. GRAY. I should like to ask the Senator, as he is discussing that provision of the Mississippi constitution which he says practically puts the election into the hands of Democratic election officers to administer, whether practically the same thing will not work out under this elections bill.

Mr. HOAR. No, sir. The bill which is reported from the Committee on Privileges and Elections leaves the management and conduct of elections to the State officers, except that what occurs is to be reported by these inspectors who are present and who understand what has transpired and record the evidence and preserve it, and then, if there is a question as to who is *prima facie* entitled to the seat, that is to be passed upon by a board appointed by the judges of the circuit court, who are the most impartial men we can get for all our rights wherever they depend upon the enforcement of the law, with an appeal to those judges themselves.

Mr. GRAY. Mr. President——

Mr. HOAR. Wait a moment.

Mr. GRAY. I think the whole thing turns right here, if the Senator will pardon me for pressing that point.

Mr. HOAR. The judges of the circuit court will not be and are not now all Republicans. In the State of New York there is one Democratic judge of the circuit court.

Mr. GRAY. If the Senator will allow me right there, I wish to call his attention to the fact, because I know he does not want to make an argument upon a false basis of fact, that the Democratic circuit judge of New York was appointed by the late Democratic President under a law passed by Congress which absolutely excluded him from any participation in the administration of the election laws.

Mr. HOAR. Not at all. It only provides that the senior judge shall be applied to first, and, if he is absent, then the other. As I have said already, in the great circuit which includes Tennessee and Kentucky and Ohio and Michigan this function is to be exercised by our late honored colleague, and I suppose, if any man was the trusted and

intimate and confidential associate of the late Democratic President, it was Judge Jackson, of Tennessee.

But, Mr. President, the single function of passing on a *prima facie* title and witnessing and reporting facts, intrusted to the judges and not to local election officers, is a very different thing from the right of any human being to pass on my title to be a voter according as he shall think I understand the Constitution or give a reasonable interpretation of it, or passing, if not on my right, on the right of any man to vote.

I do not wish to take up time unnecessarily, but I am going to say something about this matter when I come to deal with the argument of the honorable Senator from Delaware. What I am talking about now is that the Mississippi Democrats of high authority, the president of that convention and others, have declared that this provision was inserted in the constitution of that State as a fraudulent method of getting rid of the Republican vote of Mississippi, the negro vote, for the sake of saving themselves from what that South Carolina paper called the terrible stain of murder and fraud and outrages by which it had previously been done, and that is what Judge Calhoun said, as I understand it.

Mr. TELLER. Will the Senator allow me to ask him a question?

Mr. HOAR. Certainly.

Mr. TELLER. There has been a good deal of discussion as to this Mississippi constitution, which probably means just what the Senator says it does. I want to ask the Senator if there is anything in this bill which touches that wrong of which he complains.

Mr. HOAR. No, I do not suppose there is.

Mr. TELLER. I wish to ask the Senator whether in his judgment there is any power in Congress to touch that wrong.

Mr. HOAR. I think there is.

Mr. TELLER. I should like to correct the Senator as to one statement he made a moment ago as to the purpose of this bill. I speak now of the bill that is before the Senate as it came from the House of Representatives, which provides *ex industria* that when there is a controversy between the State officers and the Federal officers the Federal officers shall decide, and when they do decide the ballot shall be put in the box and not certified, as is provided in the Senate amendment.

Mr. HOAR. I think the Senate amendment has cured that difficulty. There are a great many things in the original bill which have been changed by the Senate committee.

Mr. MORGAN. Will the Senator from Massachusetts allow me to ask him a question for information?

The VICE PRESIDENT. Does the Senator from Massachusetts yield?

Mr. MORGAN. I desire to ask the Senator from Massachusetts a question for information merely. Under the constitution of Massachusetts, which requires that the voter shall be able to read a designated section in the Constitution of the United States, what is the practice there? Under the law who decides whether or not a man reads and reads correctly the designated section of the Constitution of the United States?

Mr. HOAR. It is done by the mayor and aldermen in the cities and by the selectmen in the towns.

Mr. MORGAN. Is that before the election takes place?

Mr. HOAR. Yes.

Mr. MORGAN. A question of registration?

Mr. HOAR. Yes, a question of registration.

Mr. MORGAN. There is no appeal from their decision?

Mr. HOAR. There is no appeal from their decision. In Massachusetts it is not a question of reasonable interpretation, of construction, but it is a question of fact whether a person can read and write his name, and that is all the constitution of Massachusetts requires.

Mr. MORGAN. I suppose a blind man could not read the constitution, but at the same time he might have a clear understanding of it.

Mr. HOAR. I understand that; but there is a special provision in regard to cases of that kind.

Mr. President, there hangs over all the election officers in Massachusetts the liability to a suit if they err in point of fact. It is not a question of judgment, it is not a question of malice, it is not a question of right or wrong intent, but it is a simple question of fact under the Massachusetts law. If the selectmen of the town or the mayor and aldermen of the city deny a voter his right to vote, he being entitled, they are liable to suit, and the juries in the few cases which have happened have, without regard to political prejudices, estimated that privilege as a very valuable one.

Mr. MORGAN. I should like to say to the Senator from Massachusetts that I shall not undertake to justify that provision in the Mississippi constitution; I do not approve that provision in the Mississippi constitution. I should prefer that of Massachusetts, which excludes a man entirely from the right of suffrage because he can not read and write the English language.

Mr. HOAR. And applies to all races alike.

Mr. MORGAN. The constitution of Mississippi is not amenable to that objection, because it applies to all races alike.

Mr. HOAR. I understand; but I am not speaking about what the Senator from Alabama says he would like.

Mr. MORGAN. I will state to the Senator from Massachusetts that it seems to me, if he will allow me to say it, that the doctrine he is now arguing and advocating, of the right of a State to exclude everybody from suffrage upon any ground except race, color, or previous condition, it seems to me, applies very pointedly to the case of the South Carolina law providing eight ballot boxes——

Mr. HOAR. I think that is hardly within the ordinary limit of interruption.

Mr. MORGAN. I was just going to say that if a man did not have sense enough to find a ballot box he would scarcely have sense enough to put a ballot in the box.

Mr. SPOONER. But sometimes they shift the ballot boxes.

Mr. HOAR. The ballot boxes are shifted from place to place.

Mr. MORGAN. They are all marked.

Mr. HOAR. They are marked so that they can not be understood. The Senator from Alabama and the Senator from Delaware and the Senator from Mississippi all are answering not me, as far as they answer anything or anybody, but the Democrats of the South who confess this thing. I have made very little comment on the South Carolina eight-ballot-box law. I said that the Charleston News and Courier says that it is a shame to the manhood of the State to resort to this fraud and subterfuge.

Here is a speech of an eminent Democrat in the Mississippi convention, Major Magruder. I presume the Senators from that State will

recognize that name as a Democratic name, a good member of the church. Major Magruder said:

To him it seemed that the clause qualifying one to vote who could understand the constitution when read to him, not only contrives a means of fraud, but is an open invitation to its perpetration. Who is to decide the degree of intelligence and what is the standard?

The gentlemen may repel imputations of fraud, but this is a fraud upon its face—

Says this eminent Mississippi Democrat.

There are laws against any fraud against the ballot, but every man of sense knows you can not hedge this provision against abuse. The truth is the registrar can tell his enemies to stand aside and his friends to enter and no one can charge the act as corrupt. In the very nature of things the charge could not be proven. Would it have been suggested if there were not white men to be admitted and negroes to be excluded? Strike out the clause and redeem the scheme of the committee from its polluting spirit. Its presence was the trail of the serpent over all the other provisions, and revealed them as questionable devises. We have laid upon us a supreme, sacred, and difficult trust. It is an exigency in our history without parallel in the experience of nations. The welfare of our State, a tranquil and enduring civilization for its destiny, is the inspiration for the patriot, above all concern of self, devices, makeshifts, and tricks. Unworthy of the hour they will find no lodgment in the respect of the people.

I do not wonder they did not submit it to the people.

Build on the bedrock of eternal principles of candor, justice, and right.

Ah, Mr. President, there are and have been Democratic representatives of Mississippi in this body at whom I shall be surprised if I hear that they are willing to give the aid of their name and character to the provisions of this constitution.

The Senator from Alabama admits that the negro Representatives of the South have been as a rule men of fair intelligence and ability; he says they got it by associating with the whites. Very well; they got it. They were chosen in the days when the negro votes for Representatives were fairly counted. If in those days when you were taking no part in the Government the negro chose honest and able men to come here, men who got their honesty and intelligence from associating with the whites, what right have you to suppose he would choose dishonest men to come here hereafter?

The Senator from Alabama goes on to say:

But it must also be admitted that the disqualifying and dangerous effects of ignorance in suffrage are not confined alone to the negro race. In our white voting population there is an alarming amount of ignorance and incompetent and dangerous suffrage.

It must however be remembered as an important qualifying fact that the ignorant white is most always under the influence and generally subject to the control of some white man who is sufficiently informed to qualify himself and to instruct others in the proper use of their right to vote.

It comes to this, then, as the final argument of the Senator from Alabama so far as we have heard it—I suppose we shall hear from that State again—that the ignorant white is controlled by a Democratic leader, while the ignorant black is influenced by a Republican leader. The whole contention reduced to its last analysis is an unconstitutional attempt to deny to the blacks citizenship, whether ignorant or instructed, what you give to white ignorance, because one follows Democratic leadership and the other does not.

The Senator from Alabama further adds that—

The intelligent and moral white people of the North would demand noninterference in their dealing with the dangerous elements of their suffrage admitted to exist in their large cities.

The Senator is in my judgment much mistaken. They do not de-

mand noninterference; they welcome and salute and hail the national aid and the national strength. They need it.

The junior Senator from Mississippi [Mr. WALTHALL], whom I heard, as always, with great admiration and pleasure, did me the honor to quote some impromptu remarks of mine made at the last session in the course of an interruption of the speech of the Senator from Virginia [Mr. DANIEL]. They are in substance what I have said many times at home and here, and I wish to repeat them now. I said that in my judgment the Democratic statesmen of the South were—

> Sowing in the breast of that race a seed from which is to come a harvest of horror and blood, to which the French Revolution or San Domingo is light in comparison.
>
> We desire, those of us who live in the North, to do everything we can to help you if you will only accept our help and not spurn it. We will pour out our money like water; you may tax us by the ten million or the hundred million or the thousand million, if it is needed, to give these people the intelligence and education which are necessary to fit them to live with you as citizens.
>
> I know, too, when I say these things that I am saying them of my countrymen. I am saying them of men with as gallant, noble, and honorable traits, where this race prejudice does not get possession of their souls, as ever existed on the face of the earth.
>
> They have some qualities which I can not even presume to claim in an equal degree for the people among whom I myself dwell. They have an aptness for command which makes the Southern gentleman wherever he goes not a peer only, but a prince. They have a love of home; they have, the best of them and the most of them, inherited from the great race from which they come the sense of duty and the instinct of honor as no other people on the face of the earth. They are lovers of home. They have not the mean traits that grow up somewhere in places where moneymaking is the chief end of life. They have, above all and giving value to all, that supreme and superb constancy which, without regard to personal ambition, without yielding to the temptation of wealth, without getting tired, and without getting diverted, can pursue a great public object in and out, year after year, and generation after generation.

They have not got frightened out of their notion of the true interests of the South by the reverse of a single election.

> In the great future which the hundred million and the two hundred million who are to inhabit and rule this continent are to enjoy, the greatest and most glorious part, my brethren, is to be acted by you. But I do not believe it is a good thing that a generation of young men anywhere shall be brought up to believe that the election methods which we hear of and which we know of are honorable or reputable.

The Senator from Mississippi asks how it can be that a people who possess these qualities can be supposed to do or suffer the things with which they are charged in connection with negro suffrage. Ah, Mr. President, that is the paradox of human nature. How happened it that the Scotch cavalier, the darling of history and of poetry, murdered the covenanter in cold blood before his own door or tortured him with the boot and the thumbscrew? How happened it that the French noblesse, the very ornament and consummate flower of manhood, trampled with its iron heel into the earth the peasantry of France, until at last the volcano burst forth and covered all Europe with its liquid fire? How happened it that the two greatest sovereigns of England, two of the greatest names in the history of English liberty, Cromwell and William, were the worst and the most cruel oppressors of Ireland? How happened it that even such men as Hampden and Vane and Milton and Locke, zealous champions in their day of civil and spiritual freedom, yet held that the Roman Catholic had no claim to toleration?

It may be hard for two populations differing in race and color, in political opinion, yet locally intermingled, to dwell together in amity under republican government, but in the present case the crime, the

blame, the barbarism, have been on the side of the superior race. Out of the thousands of outrages on black and white Republicans which have been committed in Mississippi in the interest of the Democratic party the Senator has not pointed to one that was ever punished. I believe one poor dog of a white man has been hanged for a nonpolitical murder of a negro, but the countless election outrages have gone on without punishment and without rebuke. The murder of Print Matthews, the kindly citizen and excellent neighbor, in the act of casting his ballot and in the hearing of his wife and daughter, by the Democratic city marshal, whom he had received as a guest in his house within a week, was approved by the Democrats of Copiah County. The district attorney wrote the resolutions. The superior race in Mississippi marked their dread of being reduced to barbarism by Republican policies by burning the house of his widow shortly afterwards. Within the Christmas season of this very year, the time of peace upon earth and good will to men, that widow's son, the Republican postmaster, a young man of twenty-one, has been shot down in the streets of Carrollton, the home of the Senator's colleague. How long, oh God, shall the blood of these martyrs cry for vengeance from the ground? How long shall the murder of men because they are Republicans be the only crime to which Republicans are indifferent?

The Senator thinks that the era of these things is passing by in Mississippi. Let us hope so; let us hope so. Let us hope that when its dark and bloody history is written it may be recorded that there was at least one manly voice in all her chivalry to utter the indignation of an American freeman at the outrage on Americanism and on freedom.

Mr. President, I have detained the Senate already too long, but I ought to advert briefly to the elaborate argument running through three days of the honorable Senator from Delaware [Mr. GRAY]. He objected, in the first place, as I understood him, to the use by the national Government of its constitutional power in this respect at all. He would sweep all existing laws from the statute book. He would have left New York unaided to deal with Tweed. He would do what I think was well summed up by Mr. Roscoe Conkling, a former Senator from New York, with whom I did not always find myself agreeing, and I wish to state what Mr. Conkling said in advocating the original law which the Senator from Delaware wishes to sweep from the statute book:

In the city of New York—

Said Mr. Conkling—

all the thugs and shoulder hitters and repeaters, all the carriers of slungshot, dirks, and bludgeons, all the fraternity of the bucket shops, the ratpits, the hells and the slums, all the graduates of the nurseries of modern so-called Democracy, all those who employ and incite them, from King's Bridge to the Battery, are to be told in advance that on the day when the million people around them choose their members of the National Legislature, no matter what God-daring or man-hurting enormities they may commit, no matter what they do, nothing that they can do will meet with the slightest resistance from any national soldier or armed man clothed with national authority.

Mr. MORGAN. Will the Senator inform me of the date of that speech?

Mr. HOAR. It was made at the extra session of 1879 on the bill which proposed to repeal the legislation of 1871.

Mr. MORGAN. Would it inconvenience the Senator from Massachusetts to allow me to ask him a question before proceeding with the argument of the Senator from Delaware? I wish to ask the Senator from

Massachusetts if he holds in common with many of his Republican brethren that a Senator or a member of the House of Representatives is an officer of the United States under the Constitution?

Mr. HOAR. Well, not in all respects. I do not know that any of my Republican brethren hold that. He is a quasi officer. He is not an officer in the constitutional sense so as to be impeachable, because there is a special provision providing for that.

Mr. MORGAN. Is he an actual officer in any sense?

Mr. HOAR. I think he is in many senses. I think that a statute which should provide that no officer of the United States should make a contract with the Government under a penalty would be held to include Senators and Representatives in that term, but that is a moot and debatable question.

Mr. MORGAN. The Senator thinks that there are not——

Mr. HOAR. With great deference to the honorable Senator from Alabama, I have not said anything about whether a Senator or Representative is an officer of the United States; I have not said anything relating to it; I am discussing a claim of the Senator from Delaware, and it does seem out of place to ask me to pause and go into that much-debated question about which judges and officers of courts have differed in the past. It is rather beyond the limits of an ordinary interruption.

Mr. MORGAN. I beg the Senator's pardon, but the object of my question was this: I thought that the Senator had predicated his bill and all his argument that he is now about to make in reply to the Senator from Delaware upon the proposition that I know is entertained on his side of the Chamber very generally, and has been expressed in debate here, that a Senator of the United States or a member of the House of Representatives is an officer of the United States Government.

Mr. HOAR. That does not depend in the least upon the power and understanding as to the constitutional function or character of a Senator or Representative. It depends on what may be a difference of opinion in regard to the meaning of the word "officer" used in a certain connection. It is therefore totally foreign to this discussion.

The Senator from Delaware I suppose agrees with the Senator from New Jersey as to the Republican wrongdoing in Philadelphia, where that Senator from New Jersey says the election officers are bribed, 40,000 names are fraudulently registered, 15,000 fraudulent votes are cast or altered inside the polls, and it is the practice to dump as many votes as may be necessary into the box. That is what Philadelphia has got to according to the Senator—I have not investigated that particular statement—at the expiration of one hundred years of this system, which has worked so well, of leaving it to the State. Now, that Senator would wait for the hour until the villains who profit by these wrongs repent of them. He would wait until the ku klux are fatigued or converted, or until the States they control get out of their power, before he would find a remedy. Being asked what remedy he would propose, the Senator says he would trust the people as they have been trusted for a hundred years.

Mr. GRAY. Will the Senator allow me there one moment?

Mr. HOAR. Certainly.

Mr. GRAY. I said nothing in the course of the remarks I submitted to the Senate about elections in Philadelphia.

Mr. HOAR. No; that is true.

Mr. GRAY. But assume the rumor which obtains, a partisan rumor, if you please, among Democrats, that elections in Philadelphia are fraudulently conducted in the interest of the Republican party. I have no doubt that the Democrats believe that quite as sincerely as the Republicans in New York in that era that is long past and gone believed that election frauds were in the interest of the Democratic party. But, assuming that to be true, the argument that I attempted to make in regard to the partisanship of this bill was that in a Republican city like Philadelphia the law had never, in any respect, hindered or corrected any of those evils, but were only directed and only operated under partisan administration in cities that were supposed to be Democratic in their population and tendencies.

Mr. HOAR. That argument I think has been most abundantly answered by the citations which we have made of the application of Democrats in various cities all over the country and the testimony of Democrats as to the good working of the law.

There is a constant repetition in the speech of the Senator from Delaware of two charges: first, that the method proposed by the bill takes the conduct of elections from the people of the locality; second, that it proposes partisan methods. Then he claims that this is not a judicial power, that it can not be conferred on the courts; and he also adds to that and accepts the suggestion of the Senator from Mississippi [Mr. GEORGE] that if it be a judicial power it can not be conferred on election officers.

Mr. President, let me take that last suggestion first. Certainly what the court does, as has already been stated in this debate, is to render a final adjudication as to the title to an office which is to be held and exercised, though that title is determinable when the judgment of the House of Representatives of the United States determines it. Now, there are a thousand cases settled by uniform practice of powers which are exercised by ministerial officers in the beginning, with which the court interferes by mandamus or other process, and thus interfering makes a judicial determination of the right: cases of issuing or refusing licenses, compelling public duties to be performed by officers, recording deeds, issuing mandamus to executive officers of all sorts, bankruptcy proceedings. Though the opinion in Marbury *vs.* Madison was an *obiter dictum*, as the Senator has well said, yet it fully recognizes that doctrine. The court in its opinion settled the title to an office by declaring what the secretary of state ought to do, in delivering a commission to Mr. Marbury.

The Senator says that the appointment is really with the commissioner though nominally with the court. I do not see how that can be said. The scheme of the bill is that persons are to be invited to apply by a written application. That makes an engagement to take the office on the part of the official and furnishes some judgment of his capacity, so far as dealing with records is concerned, to read and write, his scholarship, his education; and it gives an opportunity to the court for full investigation before he is appointed. Then the commissioner who is to superintend these officers, and has the experience of past years and his knowledge of men, makes out his list. But the court is not confined to that list. He can reject every man on it, and the judge may appoint any other person whom he sees fit.

Mr. GRAY. If the Senator will allow me, I wish to call his attention to the provision of the bill which he says insures a certain amount

of education in that the applicants are required to apply in writing. Is that what I understood the Senator from Massachusetts to state?

Mr. HOAR. Yes, sir.

Mr. GRAY. The bill provides that the supervisor shall furnish to all applicants blanks upon which they are to make their application. So they have merely to sign their names.

Mr. HOAR. They write their names, but they fill up the blank as to their age and description and all the other things mentioned. The blanks are to be filled just like the civil-service applications exactly. That is precisely the provision of the civil-service application.

Mr. GRAY. The civil-service rules, if I may be pardoned, provide for the examination of the applicant afterwards.

Mr. HOAR. There is an opportunity here for all the examination the judge thinks proper.

Now, the Senator from Delaware used one phrase which struck me very unpleasantly, and yet it is a phrase which discloses a state of opinion in reference to the Constitution of the United States which has been, in my judgment, the source of a good many more woes to this country than the Senators on the other side impute to the fifteenth amendment. He says that they do not want any alien force in Delaware, speaking of the election of the Representatives of the great National Assembly of his country, and speaking of the right of his country to see to it that the election of those Representatives is conducted fairly and honestly. He does not want any alien force, conveying the notion that it somehow is not his country, and that the Government of the United States does not represent the people of the United States as the governments of the States represent the people of the several States, and it is an alien and a foreign power. One Senator used the phrase, I think, that he did not want this Government to go down into the States. Why, Mr. President, this Government is in the States, all over them. It is of them; it is inseparable from them; it is inseparable from the people of the States; it is in its home, and it is obeying their will in the exercise of its constitutional powers quite as much as any State government and a great deal more than any small or petty local election officer.

Mr. GRAY. I wish the Senator would read, if he has it there, the connection in which I used that word, if I did use it.

Mr. HOAR. I have it not here, but I remember the word very well. It is the same fallacy that appeared in the statement of the senior Senator from Alabama [Mr. MORGAN], in which he spoke of the Senators as embassadors of sovereign States. Mr. President, there is not a word in the English language more inappropriate to the character or function of a Senator of the United States than the word "embassador." An embassador goes to represent the sovereign who commissions him and to encounter the representatives of foreign alien sovereignties, to look out for his sovereign's interest and not for theirs. On the other hand, when a Senator is chosen he represents as completely and as thoroughly and owes obedience as completely and as thoroughly to the people of every other State in the Union as he does to the people of his own.

The old notion that the Legislature of a State could instruct a Senator as of course the sovereign could instruct an embassador is exploded among our best constitutional authorities. The Legislature of Delaware has no more right to order its Senator, because it appointed him, to do anything which he thinks is not for the good of the whole people

of the United States than the President of the United States has to order a judge of the Supreme Court to render or not to render a certain judgment because he appointed him. He acts for the whole people.

Mr. President, I think those of us who have been here longest can remember with great satisfaction the honorable act of a distinguished Senator from Mississippi, a distinguished Southern statesman of the Democratic faith, now an ornament to the Supreme Bench of the United States, who when his people directed him contrary to his own view to vote for a bill which, in his judgment, would debase the currency of the country and be against its interests, would be a breach of its faith in the performance of its contracts, rose in his place here and said that the time had now come for him to put in practice the lessons he had been teaching to the youth of Mississippi, and he voted against the instruction of his Legislature.

Mr. EDMUNDS. Will the Senator pardon me?

Mr. HOAR. Certainly.

Mr. EDMUNDS. I will remind him—of course it is an argument on the other side—that the views expressed by the Senator from Delaware are embedded in the written constitution of the Confederated States, and the idea still continues. I think the Senator from Massachusetts ought not to forget that.

Mr. HOAR. That is true, Mr. President; but let us do justice to that gallant though misguided people. Even then they preserved in the constitution of the Confederate States the provision of our Constitution that the Confederate government should take order for the election of representatives or could change the regulations of the States.

Mr. EDMUNDS. They went further and declared the qualification of voters.

Mr. HOAR. Yes; and they went further in the Confederate constitution and declared the qualification of voters, as the Senator from Vermont informs me.

Mr. President, I have no objection to the phrase "sovereign States;" I like it. The States of this Union are sovereign. I never agreed with my distinguished leader and friend, Mr. Sumner, in his objection to the use of that word. I never could understand why the word "sovereign" was not properly applied to an authority which had power over life and death, over the civil conduct of men in all the civil relations of life, over crimes and punishments, over the marriage relation, over the conveyance and descent and distribution of estates.

But the sovereignty of the State does not exist anywhere in any relation it has to the Senator. What the Senator represents in his State is not a particle or tittle of its sovereignty. It is only that State as an integral, constituent, indissoluble part of another single, greater, and more august sovereignty, the sovereignty of the United States of America.

Why, the Senator objects to a petition of a hundred residents or fifty, in the two cases that are provided for; that is a clause which has met with a good deal of criticism on both sides of the Chamber; but it is very simple. Senators say this ought to apply to all alike. It is a very simple matter. There are many districts in the United States, I hope very soon there will be a very large majority of districts, perhaps all of them in the progress of time, where it will be unnecessary to put this mechanism in force; everybody will be satisfied with the integrity and efficiency of the local election officers, and therefore it is practically a unanimous consent. You can not take the sense of the

district in advance and get a unanimous consent, and therefore the only way is to say that unless a certain respectable number of citizens ask for it is to be understood that in the common judgment of everybody it is not necessary, and therefore it shall not be put in force.

The Senator from Delaware or some other Senator said that under this bill you could not convict an officer of the United States who should shoot a State election officer or a citizen at the polls; that you could not put him on his trial because of the operation of the Nagle case. I do not understand the operation of the Nagle case as was understood by the Senator who made this criticism upon the bill. I understand that the Nagle case, which I have before me, held exactly, in substance, that an act lawfully and necessarily done by an officer of the United States in the discharge of an official duty could not be punished as a crime by a State; and I suppose everybody agrees that if it is lawfully and necessarily done in the discharge of an official duty it is not a crime anywhere. Next, that the United States court had a right to interpose to prevent the unlawful punishment of such an act as a crime, and that nobody found, though of course the usual method of interposition——

Mr. GRAY rose.

Mr. HOAR. Let me conclude this statement.

Mr. GRAY. Certainly, if the Senator objects to an interruption.

Mr. HOAR. Wait until I get through with my statement, because I will lose the thread if interrupted at this moment.

Mr. GRAY. I thought the Senator was through with it. I beg his pardon.

Mr. HOAR. I shall be through in a moment. I am speaking of the Nagle case and I do not want to break off here. The usual mode of action of a court of the United States is to wait until the State tribunal has got through and rendered its judgment, until it has got its final judgment. Then, if there had been in the course of the trial an erroneous ruling on a matter of law which affects this constitutional defense, the record is sent up and the proceeding is confirmed or set aside, as the case may be. But it is equally well settled long since that that interposition may be made at any time during the proceeding, and that, if such a question arises, whenever it is presented the court of the United States may take possession of the case and remove it from the State jurisdiction and do what it finds necessary to give effect to the constitutional right of the citizen for his defense. That is old and well settled, though not so well known as the other.

Now, it was said in the Nagle case, and that affects the point which was made on the other side in this debate, that if the circuit court of the United States may by habeas corpus remove from a State jurisdiction the trial of a United States officer who sets up such a constitutional defense under United States authority it may prevent the man from being tried at all, because the fact whether or not this defense existed may depend upon a question of fact that will never be tried by a jury anywhere; it may not be tried before a court competent to convict or to punish; and that was the stress of the objection to the view taken by the court in the Nagle case.

To that, as I understood it, the court reply that that is a seeming and not a real objection, because it is true everywhere in the administration of criminal justice that there is a power lodged with somebody to examine a case where a man is charged with an infamous or capital crime, in all but the little trifling cases dealt with finally by magis-

trates; that, there is a power always lodged somewhere to do that exact thing, and, before the man is put on trial for his life or liberty before the jury, to inquire whether the man is innocent or guilty in the beginning, and to inquire whether it is a case where he ought to be put on his trial at all.

Now, in the case of an ordinary offense against the jurisdiction or authority of the State, against the criminal laws of the State, that investigation is made in all the States but one or two by a grand jury, and unless the grand jury say that this is a case fit to be tried the State has not any right to trial by jury as against the citizen; the State can not compel him to be tried. In the cases where a grand jury does not act, as in California, I think, and perhaps one or two others I do not know, but in the other civil-law States—I do not know how it is in Louisiana and Texas—at any rate there is a committing magistrate who has the same power, and if he finds that a homicide is justifiable or excusable he sets the prisoner free and he is never brought to trial.

So all that has happened in this case is that where the determination of the preliminary tribunal, of the magistrate or the grand jury as the case may be, is to be governed by the consideration whether the man were or were not innocent because of his being in the exercise of an authority under the Constitution or laws of the United States, that preliminary investigation shall be had by the circuit court of the United States, certainly a tribunal as dignified as any committing magistrate, certainly a tribunal as dignified as any grand jury, subject, however, to the revision and supervision of the Supreme Court of the United States itself. Now, that I understand is the doctrine of the Nagle case.

Mr. GRAY. Will the Senator allow me to interrupt him now?

Mr. HOAR. Yes, in a moment. I submit that that is a reasonable, wise doctrine, and in the possibilities which we unhappily know of, conflicts and prejudices existing in regard to the functions and discharge of the duties of officers of the United States, it is not only a wise, but a salutary and necessary rule. Now I will hear the Senator from Delaware.

Mr. GRAY. I submit to the Senator from Massachusetts whether the account he has given of the judgment of the Supreme Court in the Nagle case and the effect of it do not justify the criticism which was made upon this side and of the probable effect which would result from the pending bill in case an election officer should slay a citizen of a State.

The Nagle case resulted in the discharge of Nagle entirely, and he was exempted not only from trial for the homicide by the State court, but he was exempted from all trial whatever, as we understand the word trial in English-speaking countries. The court in effect said that, being an officer of the United States in the discharge of a duty imposed upon him by general law, imposed upon him necessarily from the functions that he exercised as a United States officer, he could not be tried for the homicide in a State court, and by habeas corpus they did not undertake to remove the case from a State court to a Federal court, but by habeas corpus proceedings discharged him entirely from all liability to the State or to any other law for that homicide or to be inquired of concerning the homicide.

Therefore it seems to me that the effect of that case would be just what was said on this side, I think by the Senator from West Virginia [Mr. KENNA] principally, and by myself, that if an election officer, a supervisor or a deputy marshal, using the armed force of the United States, should slay, in the discharge of his duty, a man who resisted ar-

rest or in any other way gave him what he thought occasion to use the ultimate power that was lodged in him in his opinion, and the State whose laws it is conceived were broken and whose peace was violated should attempt to try him, then according to the doctrine of the Nagle case a United States circuit judge would issue his writ of habeas corpus and having that election officer before him he would decide that he could not be tried because in the opinion of the judge he had used only as much force as was necessary for the discharge of his duty, and there being no Federal statute now which provides for his trial he would have to discharge him entirely.

Mr. HOAR. Certainly. Now, let us examine it.

Mr. GRAY. If there were a Federal statute and there was any colorable ground for his arrest no Federal judge would withdraw him from the jurisdiction of a Federal grand jury and a Federal petit jury, as they did in the Nagle case from the State grand jury and the State petit jury. If the Senator will pardon me just one word in regard to the defense, the proceeding was set up at the bar, and I believe by the court in its opinion, that by way of analogy the circuit court was doing nothing more and exercising no greater power than was exercised by every committing magistrate who undertook to say whether a man should be held for examination by a grand jury and for trial according to the methods that he believes are necessary to the preservation of the liberty of the citizen in all English-speaking countries. But in a State, after a committing magistrate shall have come to the conclusion that no cause exists for holding the man for trial and examination before a grand jury, there is nothing, I submit to the Senator from Massachusetts, to prevent the grand jury, of its own motion, upon evidence brought before it according to the forms of law, from examining the case and sending down a bill of indictment and bringing the man who has thus been examined by the committing magistrate before the proper State tribunal for trial. All this is swept away and all this protection of the life of a citizen is entirely done away with by the doctrine of the Nagle case, which applies to the officers provided for under this bill.

Mr. HOAR. There is no need to state over again what I said. If a New York thug or a Massachusetts thug undertakes to commit an assault, to carry off a ballot box, to resist the lawful authority of an officer of the United States, and he is shot in the process, a Federal grand jury, if the United States had charge of that offense of shooting him by its officers, would refuse and ought to refuse to indict him. If a State officer had done the same thing a State grand jury would refuse and ought to refuse to indict him. The State committing magistrate would refuse to hold him for trial, although of course there might be an indictment by a grand jury afterwards, if they thought proper. They would not look to see, as the Senator says, whether there was color of reason to believe that he had been guilty; they would look at the facts, and the committing magistrate would not commit him unless he finds him more than probably guilty, and the grand jury would not indict him unless he seemed to be guilty beyond reasonable doubt.

Now, when that happened by the act committed by a Federal officer, all that has happened under the Nagle case and all that will happen in regard to this election law and all other officers is precisely applied to every exercise of authority by a United States officer everywhere, an election officer as much as any other, and no more. The United States court will consider the question whether that man ought to be put

upon his trial, and if they think he ought to be they send him back to the State court; they remand him. If, on the other hand, they think he ought not to be put on trial, then they discharge him and prohibit the State court from proceeding any further. I say that that is a perfectly just, wise, and salutary system expounded by the Nagle case and applicable to all officers of the United States whatever, and that the public peace and the public protection against the unlawful acts of public officials is certainly quite as much preserved by having that preliminary inquiry, which must take place somewhere, in all cases under the direction of a judge of the circuit court, subject to a revision by the Supreme Court of the United States, as it is by leaving it to a local grand jury or State grand jury or Federal grand jury.

Mr. GRAY. Now, if the Senator will pardon me, I am sure this is a question important enough to get at what is really the correct opinion about it. I wish to submit to him that that is not the point of the objection which was made some time ago and is renewed now so far as I can renew it. It is this, that under the Nagle case any one of these election officers who had committed a homicide in the discharge or in the alleged discharge of his duty would be exempt from all trial by jury by the State.

Mr. HOAR. Certainly.

Mr. GRAY. And therefore you would be sweeping away the whole institution of the grand and petit jury and substituting for it the opinion of a United States judge as to whether the man ought to be tried or not.

Mr. HOAR. Exactly.

Mr. GRAY. Now, if the Senator thinks that is a safe provision to enact into law or to support or defend, I should be very glad to hear him enlarge upon it.

Mr. HOAR. My dear sir, if I may address the Senator from Delaware or the Chair by that endearing appellation, as a Senator from Illinois used to do, that is the law now. It is the law in regard to every United States officer under the sun, and you might just as well criticise a bill providing for an additional customhouse officer or any other bill.

Mr. GRAY. Then, if the Senator will allow me one word, admitting that, without going any further, is not this bill obnoxious to the criticism which was made that an election officer, a United States marshal under its provisions committing a homicide can not be tried at all by a jury?

Mr. SPOONER. No more than the present law.

Mr. HOAR. He can not be tried at all if the Supreme Court of the United States declares that upon those facts he is not guilty, and that I say is a wise, just, and salutary rule, if he has a good defense, and it is true not only of every United States officer, but of every other. He can not be tried at all in Massachusetts if his offense is against the State if a grand jury of twelve men drawn at haphazard from the jury boxes say he ought not to be. He can not be tried in California certainly, unless some committing magistrate is of the opinion that he ought to be, in the first place, and so on. The only thing Senators complain of is that the question whether the man ought to be put on his trial, the trial which every citizen has the right to have decided by a preliminary tribunal somewhere, is decided in the case of a Federal officer by the Supreme Court of the United States, where it is decided in ordinary cases by the ordinary committing magistrate or by ordinary grand juries.

Mr. SPOONER. That is an objection to the present judicial system, not to this bill.

Mr. HOAR. That is an objection to the whole present Federal judicial system and an objection to the Constitution of the United States as expounded by its highest constitutional tribunal.

Mr. GRAY. Let me call the attention of the Senator from Massachusetts to the fact that there is on the statute book to-day a provision in regard to a certain class of United States officers, that when they commit an offense of this kind they shall be tried in the United States courts on the indictment of a Federal grand jury by a Federal petit jury, but those laws do not apply to the class of officers provided for in this bill.

Mr. HOAR. I must hurry to a conclusion. The Senator thinks this is to degrade the judges. As against this argument I put the overwhelming experience of England. I will not use the *argumentum ad hominem*. I do not think any of the eminent judges of the circuit courts of the United States who have exercised this jurisdiction have been degraded by it, even in the apprehension of Democratic politicians.

Then the Senator says that the bill creates a life office. That is a criticism or a possible criticism on a phrase in the bill. The old law provided—I am not giving the language now, but the substance of it—that a commissioner of the court is removable at the pleasure of the court; that he should be assigned to this duty and should continue to do it as long as he behaved himself well, or some equivalent provision of that sort.

When this new law is passed, re-enacting the old law, it was thought that as it was a new law, though a re-enactment of the old one, the old one would not exist and it would be necessary, therefore, to appoint these officers again all over the country unless we should make a provision that they should continue in office. Therefore the bill says that the old officers shall continue as long as they behave themselves, or some similar phrase. It was not intended, however, and certainly it would not have the effect and I do not think it would be constitutional to provide that the judge could not remove for misconduct a man from his office of United States commissioner, which is the principal office, and in that case, of course, the office of supervisor would fall with it. If there is any doubt about the phraseology of the bill, it is very easy to correct it.

Mr. GRAY. I call the attention of the Senator to the fact that this language is precisely the same in effect as that used in the Constitution in creating the only life office in the Constitution, *dum bene se gesserit*.

Mr. HOAR. It is on the condition that they shall remain supervisors while they behave themselves. It does not take away the power of removal.

The Senator from Delaware says that this bill takes the conduct of elections from the people of the local precincts and transfers it to partisan officers. On the contrary, this bill does not touch the conduct of elections—and that can not be repeated too often—except where the State officials refuse to appear and proceed to perform their duties. It leaves the officers appointed by the State to conduct, as now, both the registration and the election. It only transfers the witnesses and the recording of what has happened from partisan leaders to officers appointed by the judiciary, subject to the direction and final control of the judiciary itself.

One of the most adroit measures contrived by the Democratic politicians of the South to get rid of the Republican vote has been the removal of the appointment of the officers of election from the people of the localities, mediately or immediately, to the governors of their States. The Senator from Delaware [Mr. GRAY] says that in Delaware this local control is preserved. I suppose it would be difficult to get any authority very far removed from the locality in which it should apply in Delaware [laughter], for I believe there are but three counties in the State all together; but the politicians of that State are much misunderstood if they have not contrived processes quite as effectual to interfere with the registration of Republican voters there.

In Baltimore, Md., the governor of the State appoints a local board of officers who, in their turn, appoint the election officers. I do not know that it is a local board, but it is a board of public officers who appoint officers for all the precincts, and then the law provides that the armed police may at any time take possession of the election, arrest the officers, and conduct the election themselves.

How is it in Louisiana? I understand that the election officers for all the precincts in that State are appointed by the central authority. As I said yesterday, I have not examined that question, but that, I believe, is the understanding of the Louisiana statutes. If there is a mistake about it I shall be glad to be corrected, because all the information I have on that question has been obtained by inquiry of the two Senators from Louisiana, and I understand them to so inform me.

Mr. EUSTIS. The commissioners of election are not appointed by the governor.

Mr. HOAR. By whom are they appointed?

Mr. EUSTIS. By the supervisor, who is appointed by the governor.

Mr. HOAR. Well, directly or indirectly, as I stated, they are appointed by the governor.

How is it in the State of South Carolina? The governor appoints the election officers for each county there and they appoint the local officers.

In regard to the State of Virginia I hoped to have this morning a copy of the recent election law of Virginia, which, as I understand, puts in the control of the central authority the entire appointment of all the local election officers in the State. I will, with the leave of the Senate, if I get it in the course of the day (and I have sent to Richmond for it), print the Virginia law on that subject without any further comment. But the Virginia election laws studiously remove the appointment and control of the local election officers from the people of the localities and reserve it to the central power. The Legislature elects all county and city election boards and those boards appoint and remove all local officers.

Mr. President, Senators now clamor and say that we are interfering with the authority of the people of the precinct to elect their own election officers, when many of them represent communities which have taken the control away from the people of the precincts and put it into the power of the great partisan leader of the State, the governor, for the very purpose and with the very effect of suppressing and overcoming Republican majorities in the localities.

Here is extending through many States an ingenious, deliberate, and settled policy to take the control of elections out of the hands of local officers and place it in the hands of a central power in order that elections may be manipulated for partisan purposes.

The Senator from Indiana says these two races can not live together except on the terms that one shall command and the other obey. That proposition I deny. They can live together, neither, as a race, commanding, neither, as a race, obeying. They can live together obeying nothing but the law, framed by lawmakers whom every citizen shall have his equal share in choosing.

It would be something if Senators who ask us to refrain from using the powers the Constitution has placed in our hands to protect the suffrage, and to leave to them and to their States to cure this evil in their own way, could point to a single act or utterance of their own or to a single law of their States, in all these years, designed to end this wrong and to secure justice to these American citizens. They expend all their ingenuity to find constitutional objections to any remedy we propose. They enact in their State Legislatures cunning devices to prevent the lawful expression of the will of the majority. They retain the increased representation which the population whose votes they suppress gives them. They cast the votes which they get by these unlawful practices in opposition to our dearest interests; and yet they expect us to remain quiet. They affect to dread the rule of negro barbarism, but they expect us tamely to submit that a power gained by a worse barbarism shall rule us.

The error, the fundamental error, of the Democratic party of the South, in dealing with this problem, is in their assumption that race hatred is the dominant passion of the human soul; that it is stronger than love of country, stronger than the principle of equality, stronger than Christianity, stronger than justice. To that passion, and to that alone, do they make their appeal. They make it not so much, in my judgment, for the sake of race supremacy as for the sake of party supremacy. Out of that appeal came the black codes of the period which followed the war. From that came the Mississippi plan of 1875. From that came the thousands of election crimes and the overthrow of the rule of the majority in many States and in the other House of Congress. From that has come the Mississippi constitution of 1890.

If the Democratic party of the South had shown one-tenth of the energy in raising up and fitting for citizenship their colored fellow-citizen, in improving his condition, in guiding him in honest paths, in gaining his confidence, in securing him justice, that they have put into rebellion, or into wresting their States from the rule of the majority, or into contrivances like the new Mississippi constitution, the two races would to-day be dwelling together under the flag in freedom and in honor, in peace, in prosperity, and in mutual regard. You have tried everything else, try justice. You have exhausted in vain every other policy. Yet this terrible question will not down. Your people have listened too easily to the evil counselors who have led them into rebellion, into war, into poverty, into crime. Let them listen now to the counsel of the greatest orator of antiquity and the greatest political philosopher of modern times, counsel which Sir James Mackintosh, at the close of his noble discourse, declares "states the substance, the object, and the result of all morality, and politics, and law:"

"*Hoc verissimum, sine summa justitia rem publicam geri nullo modo posse.*"

"Justice is itself the great standing policy of civil society, and any eminent departure from it, under any circumstances, lies under the suspicion of being no policy at all."

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